

# **Exhibit 1**

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

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May 25, 2018

*Via Electronic Mail*

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Re: *In re: Dealer Management Systems Antitrust Litigation*, MDL No. 2817

Dear Counsel:

We write on behalf of all MDL Plaintiffs regarding additional document custodians and search terms that we request Defendants include in their document collection and review. We request a response from Defendants as soon as possible – and no later than Friday, June 1st – as to Defendants’ position on these requested custodians and search terms. We also request that we then have a meet and confer on Tuesday, June 5th, at either 10:00 a.m. ET or 2:00 p.m. ET, to discuss the custodians and search terms that may be in dispute. Given that Defendants are refusing to engage in full-scale custodial review until there is a unified set of custodians and search terms, it is necessary to reach agreement (or impasse) on these items as soon as possible.

We note that the custodians and search terms that Defendants have already agreed to are identified in previous correspondence. *See, e.g.*, Letter from M. Nemelka to Defendants (March 14, 2018).

Finally, we note that the below requested custodians and search terms are the result of close coordination by MDL Plaintiffs to avoid duplication. Each party did independent work to identify relevant custodians and search terms, and then worked together in compiling the final, non-duplicative lists.

**I. CDK and CVR Custodians**

1. Brian MacDonald (CEO, CDK). We previously explained at length why Mr. MacDonald should be a custodian. As the CEO of CDK, he has played an integral role in

implementing the conspiracy with Reynolds to block independent integrators. He has also had direct communications with Reynolds on topics relating to this litigation and, as CEO, very likely had high-level communications with outside parties (including CDK's investors and Elliott Management) concerning CDK's revenues, profitability, corporate strategy, data policies, etc. He also received direct communications from irate dealerships regarding CDK's blocking of dealer data. And, as CEO, Mr. MacDonald was briefed on the effect and implementation of the 2015 written agreements between CDK and Reynolds.

2. Mark Roman (Executive Sales Director, CDK). We previously explained at length as to why Mr. Roman should be a custodian. He is even more important as a custodian with respect to Motor Vehicle Software Corporation ("MVSC") given that he was one of the primary people with whom MVSC communicated when applying to become part of the 3PA program.

3. Al Nietzel (CFO, CDK). Mr. Nietzel is a longtime CDK financial executive and has been CDK's Chief Financial Officer from 2014 to present. As such, he is very likely to have relevant financial information, including information relating to CDK's sales, revenues, and profitability, as well as financial analysis of the implications of the SecurityFirst initiative and blocking of independent integrators. In Elliott Management's May 2016 letter to the CDK Board, Elliott Management singled out Mr. Nietzel as having "participated in an ongoing private dialogue" with the hedge fund from 2015 to 2016, the time period when CDK was working with Reynolds and driving revenue and profit increases through dramatic increases in data integration fees. Those communications – and documents, memoranda, and analyses related to those communications – are likely to be highly relevant and may not be in the files of any current custodian. Nietzel's documents should also speak authoritatively on the competitive relationship between CDK and Reynolds prior to and during the relevant period.

4. Josh Douglas (Senior Director of Operations, DMI). Other than Howard Gardner, Mr. Douglas is arguably the most consistent connection between CDK and Reynolds. He is featured on hundreds of direct communications with Reynolds, including many where he is the only CDK executive communicating. He appears to have been CDK's primary point of contact with Reynolds in implementing the 2015 written agreements, including moving DMI's customers to the Reynolds RCI program. He was also a member of the CDK-Reynolds "Joint Team" implementing the two companies' agreements on data integration and data access. He is also a custodian for CDK's response to the FTC's conduct investigation.

5. Mike Joza (Senior Director of Business Development, CDK). Mr. Joza communicated directly with Reynolds on matters at the heart of this case, including with respect to data integration and data access. He also directly communicated with vendors about the 3PA program, including communicating with vendors regarding CDK's 3PA price increases and the rollout of the SecurityFirst initiative. He was also centrally involved in internal strategy regarding 3PA budgeting, pricing, and functionality. *See, e.g.*, CDK-0248041 (attaching PowerPoint); CDK-0163664; CDK-0235171; CDK-0238589.

6. Mike Certain (Director of Strategic Accounts, CDK). Mr. Certain has been a front-line communicator with vendors and has been integrally involved in CDK's strategy to

drive Authenticom out of business. As one example, Mr. Certain communicated with Volkswagen regarding Volkswagen's desire, in early 2016, to switch from 3PA to Authenticom for data integration. CDK-0019193.

7. David Wrobel (Director of Marketing, CDK). Mr. Wrobel is a key figure with responsibility for CDK's marketing strategy on SecurityFirst and the 3PA program. CDK-0015901; CDK-0036311. Mr. Wrobel was also involved in "DDX mass activation," which CDK implemented after it couldn't convince dealers to voluntarily use its data integration platform, and he has personal knowledge related to whether and to what extent vendors pass through 3PA data integration fees to dealers. CDK-0039511. Mr. Wrobel also communicated directly with Reynolds about the issues in this MDL, and with respect to the MVSC case, was involved in CDK's campaign to disrupt MVSC's operations in California in order to benefit CVR's competitive position. CDK-0049413.

8. Linda Bartman (Global Chief Marketing Officer, CDK). Ms. Bartman was a high-ranking marketing and strategy official. She was a front-line communicator with dealers about CDK's blocking of Authenticom. She had significant responsibility for overseeing CDK's communications strategy with respect to SecurityFirst and 3PA data price increases. She also had significant involvement in CDK's communications about its price secrecy strategy. Ms. Bartman also communicated directly with Reynolds about the issues in this case.

9. Michael Sailor (Senior Vice President of Sales for OEMs, CDK). Mr. Sailor was involved in CDK's efforts to eliminate Authenticom and other independent integrators. He was also involved in internal discussions regarding how much functionality CDK should provide vendors that participate in the 3PA program. Mr. Sailor also communicated directly with Reynolds.

10. Trey Gerlich (Senior Director, Solutions Engineering, CDK). Mr. Gerlich was a "Team Member" in the CDK-Reynolds conspiracy. CDK-1424530. Mr. Gerlich was also integrally involved in anti-Authenticom strategy and messaging; CDK's 3PA pricing; CDK's vendor strategy and vendor communications; CDK's price secrecy and price secrecy enforcement; and the SIS wind-down, among other matters relevant to this MDL. *See, e.g.*, CDK-0018738 (anti-Authenticom strategy); CDK-0214377 (same); CDK-0855940 (same); CDK-0177623 (price secrecy); CDK-0264468 (vendor outreach). Mr. Gerlich also communicated directly with Reynolds.

11. Jim Foote (Chief Security Officer, CDK, 2001-2016). Mr. Foote was the primary officer overseeing CDK security practices during the relevant period. He communicated about Authenticom; CDK's security practices with respect to data access and dealer control over data access; CDK's use of so-called "hostile integration"; and independent integrators more generally.

12. Michael Guentzel (Account Director, DMI, CDK Data Strategy). Mr. Guentzel communicated directly with Reynolds. He played a key role in implementing the 2015 written agreements. At DMI, Mr. Guentzel communicated directly with vendors and dealers regarding Authenticom.

13. Jeff Barr (Partner Ecosystem Product Strategy Director, CDK). Mr. Barr was the author of important PowerPoints regarding CDK's failed efforts to voluntarily convince dealers to install and use DDX, CDK's data integration platform. Mr. Barr also communicated directly with Reynolds.

14. John Lilly (Chief Product Officer, CDK). As Chief Product Officer, Mr. Lilly played a key role in developing, implementing, and marketing CDK's products that compete directly with independent integrators and vendors. He also communicated directly with Reynolds.

15. Scott Herbers (CVR GM and now VP at CDK). His central importance to the MVSC litigation is self-evident.

16. Jim Quinlan (VP/GM of CVR, 2016 to present). Mr. Quinlan is CVR's top-ranking official with primary responsibility for CVR's business; he interacts with both CDK and Reynolds; and in particular he interacts frequently with and reports to Scott Herbers and Bob Karp at CDK. He is thus relevant to many aspects of the MVSC case, including CDK's control over CVR's day-to-day operations.

17. Janet Michaels (GM of CVR, 2014 to 2016). As Jim Quinlan's predecessor as CVR's General Manager, Ms. Michaels is relevant to the MVSC litigation for the same reasons.

18. Scott Dudley (VP of Operations, CVR). As Vice President of Operations, Mr. Dudley is likely to have responsive documents concerning CVR's product, customer relationships, market share and market presence, and more. Additionally, Mr. Dudley was also involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system. CDK-1726380.

19. Scott Bahr (National Account Manager, CVR). As CVR's National Account Manager, Mr. Bahr is likely to have responsive documents concerning CVR's client base, customer relationships, and market share and market presence. Mr. Bahr was also involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system.

20. Jim Negrette (Director of Software Engineering, CVR). Mr. Negrette had direct communications with Reynolds and was involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system. CDK-1726380.

21. Jason Bonifay (VP of Development, CDK). Mr. Bonifay submitted a declaration in the Authenticom matter concerning AVRS's use of Authenticom. CDK-0008016. Mr. Bonifay also was involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system. CDK-0020449.

22. Bob Reiger (co-founder and CEO, AVRS). Mr. Reiger was a key player in CDK's acquisition of AVRS in 2015. *See, e.g.*, CDK-1725993 (Project Ledson).

23. Rick Francis (co-founder and CTO, AVRS). Mr. Francis was a key player in CDK's acquisition of AVRS in 2015. *See, e.g.*, CDK-1725993 (Project Ledson). Post-acquisition, Mr. Francis also was involved with AVRS's use of Authenticom for data integration on the Reynolds system. CDK-0235750.

24. Chris Morris (Director of Sales, CDK). Mr. Morris was a primary point of contact between MVSC and CDK during MVSC's attempts to join the 3PA program. *See, e.g.*, CDK-0235232. Mr. Morris also participated in internal discussions regarding CDK's demand that EVR providers pay 25% of the top-line revenues in order to join the 3PA program. CDK-0210706 ("We need to be prepared that these vendors won't join 3PA at a 25% revenue share.").

25. John Roeder (Senior Executive of Sales and Operations, CVR). Mr. Roeder is a high-ranking sales official within CVR, *see* CDK-0075814 (slide 2), and he has directly interacted with MVSC regarding MVSC's attempts to join the 3PA program.

26. Richard Nichol (SVP, New Technology). Mr. Nichol was involved in CDK's policy of maintaining a "Closed Category" or "CVR Category" prohibiting CVR's competitors from joining the 3PA program, and Mr. Nichol has specifically stated that CDK cannot permit MVSC to join the 3PA program because of the competitive threat MVSC poses to CVR. CDK-0177998.

27. Tony Limtiaco (California Operations and Inventory Manager, CVR). Mr. Limtiaco is likely to have responsive materials concerning CVR's operations, customer base, and market share and market presence in the California EVR market. Mr. Limtiaco was also involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system.

28. Jose Ramirez (DMS administrator, AVRS). Mr. Ramirez is likely to have responsive information concerning CVR's acquisition of AVRS and CVR's product quality, customer relationships, competitors, market share and market presence, and more. Mr. Ramirez was also involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system.

29. Nikki Nazaroff (Executive Director, AVRS). Ms. Nazaroff is likely to have responsive information concerning CVR's acquisition of AVRS and CVR's product quality, customer relationships, competitors, market share and market presence, and more. Ms. Nazaroff was also involved in CDK/CVR's efforts to ensure that Reynolds whitelisted AVRS's use of Authenticom for data integration on the Reynolds system.

30. Jody Doublestein (Partner Program Director of Sales, CDK). Ms. Doublestein is likely to have responsive materials concerning the terms and implementation of CDK's contract with vendors such as AutoLoop, including the Statement of Work and CDK's decision to allow AutoLoop to continue using SIS as an integrator pending the approval of AutoLoop's applications in the 3PA program.

31. DeAnne Hodum (Solutions Engineer, CDK). Ms. Hodum is likely to have responsive information regarding CDK's contract and relationship with vendors in the 3PA program, including AutoLoop and Cox Automotive's solutions.

32. Michael Postal (Engineer, CDK). Mr. Postal is likely to have responsive information about the competitively sensitive nature of the information that CDK required vendors – such as AutoLoop and Cox Automotive's solutions – to provide as a condition of its certification in the 3PA program, the technical limitations imposed on the functionality of AutoLoop's applications, and the delays in approving AutoLoop's applications for the 3PA program.

33. David LaGreca (Divisional Vice President, Software Engineering, CDK). Mr. LaGreca was a "Team Member" in the CDK-Reynolds conspiracy. CDK-1424530.

34. Mish Kumar (Director, Strategic Planning and Initiatives, CDK). Ms. Kumar was a "Team Member" in the CDK-Reynolds conspiracy. CDK-1424530.

35. Laura Stevens (Marketing Communications Consultant, CDK). Ms. Stevens was a "Team Member" in the CDK-Reynolds conspiracy. CDK-1424530. She also had a role in marketing the Dealer Data Exchange program. CDK-0035951 (see metadata).

36. Michael Kane (Account Director, DMI). Mr. Kane is likely to have responsive information about breaches of customer data by CDK that were disclosed to AutoLoop. Michael Kane was also involved with the planning and implementation of SecurityFirst. CDK-0015052.

37. JoAnn Billiter (Account Specialist, CDK). Ms. Billiter is likely to have information related to CDK's billing practices with respect to vendors in the 3PA program, including AutoLoop and Cox Automotive's solutions.

38. Joe Bihner (Senior Operations Executive, CDK). Mr. Bihner has had a lead role in managing CDK's relationship with Cox Automotive and its various solutions.

39. Byron McDuffee (VP, Global Strategy, CDK). Mr. McDuffee has had a lead role in developing CDK's strategy with respect to dealer data, including managing CDK's relationships with key vendors such as Cox Automotive and its various solutions.

40. Robert Marvin (Vice President, Commercial Strategy and Pricing). Mr. Marvin has had a lead role in pricing strategy for CDK as well as CDK's strategy regarding the acquisition of competing entities. Mr. Marvin has also conducted analysis of CDK revenue attributed to the 3PA program.

## **II. Reynolds Custodians**

1. Jon Strawsburg (VP of Product Planning, Reynolds). Mr. Strawsburg communicated extensively with CDK on topics related to this litigation, including whitelisting (CDK-0071848). He was also a primary point of contact for vendors when applying to the RCI



program, including MVSC, and, within Reynolds, he had primary responsibility for interacting with and overseeing CVR.

2. Michael Braun (Director, Data Services, Reynolds). Mr. Braun was involved in implementing the 2015 agreement between CDK and Reynolds (CDK-1802135) and in blocking third-party access.

3. Barbara L Wenclewicz (Technical Manager, Reynolds). Ms. Wenclewicz was involved in implantation of the RCI (CDK-1802135).

4. Eric Kaser (VP of Sales, Major Accounts Group, Reynolds). Mr. Kaser communicated on issues relating to customer/dealer complaints, data issues, and other topics relating to this litigation.

5. Christopher Rulon (VP of Sales, Major Accounts Group, Reynolds). Mr. Rulon communicated on issues relating to customer/dealer complaints, data issues, and other topics relating to this litigation.

6. Dan Agan (Executive Vice President, Reynolds). Mr. Agan was involved with negotiating the Reynolds Master Services agreements. REYMDL00117393.

7. Keith Hill (VP of Sales, Reynolds). Mr. Hill communicated on issues relating to data security, security enhancements, customer/dealer complaints, and other topics relating to this litigation.

8. Peter Sidwell (VP of Sales, Reynolds). Mr. Sidwell communicated on issues relating to data security, security enhancements, dynamic reporting, dealer complaints, and other topics relating to this litigation.

9. Kasi Edwards (VP of Marketing, Reynolds). Ms. Edwards contains internal and external Reynolds corporate communications regarding security updates, security enhancements, CDK disruptions, the Authenticom lawsuit, and other topics relating to this litigation. REYMDL00103795.

10. Ian Reilly (Manager, Sales Operations Canada, Reynolds). Mr. Reilly communicated with dealers regarding integration fees (REYMDL00113712; REYMDL00113714) and other issues relating to this litigation.

11. Jamie Martin (Marketing, Reynolds). Mr. Martin was listed as part of the team implementing the 2015 agreement between CDK and Reynolds (CDK-1424530) and created marketing materials regarding data security (REYMDL00025832).

12. Tim Rahill (Account Executive, Reynolds). Mr. Rahill discussed data integration fees with dealers (REYMDL00059819) and other issues relating to this litigation.



13. Donald Burlile (Manager OEM Relations, Reynolds). Mr. Burlile communicated with OEMs and dealers regarding data integration fees. REYMDL00080791.

14. Andrew Knowles (Product Planning Manager, Reynolds). Mr. Knowles was involved in communications with CDK regarding Reynolds' applications (REYMDL00067109; REYMDL00119304).

15. Steven Mears (Director, OEM Solutions, Reynolds). Mr. Mears was involved with communications concerning data integration fees (REYMDL00088767) and communicating with CDK regarding DMS access issues (REYMDL00067354).

16. Kimberly Durnell (Account Executive, OEM Solutions Group, Reynolds). Ms. Durnell sought extensions of the wind-down period for certain applications (REYMDL00067412); and was involved in communications with CDK regarding Reynolds' applications (REYMDL00067354).

17. Will Farley (Business Development Manager, Reynolds). Mr. Farley was a "Team Member" in the CDK-Reynolds conspiracy. CDK-1424530.

18. Tim Boughan (Account Manager/Business Development Supervisor, Reynolds). Mr. Boughan was AutoLoop's account manager and is likely to have responsive information regarding RCI price increases, RCI certification requirements and procedures, and RCI contracts with AutoLoop.

19. Brian Cumbow (Former Account Manager, Reynolds). Mr. Cumbow was AutoLoop's former account manager and is likely to have responsive information regarding RCI price increases, RCI certification requirements and procedures, and RCI contracts with AutoLoop.

20. Stewart Ross (Engineer, Reynolds). Mr. Ross is likely to have information about the technical aspects of AutoLoop's integration with RCI and the process required for a vendor's application to integrate through RCI.

21. Kevin Lawson (Engineer, Reynolds). Mr. Lawson is likely to have information about the technical aspects of AutoLoop's integration with RCI and the process required for a vendor's application to integrate through RCI.

22. Stephanie Prier (Product Analyst, Reynolds). Ms. Prier is likely to have information about the process by which AutoLoop was approved for RCI certification and the terms of the RCI contract with AutoLoop.

23. Robert Burnett (SVP, Corporate Development, Reynolds). Mr. Burnett is a long-time Reynolds executive who has played a lead role in managing all aspects of Reynolds' business, including formulating and implementing its data access policies; managing Reynolds' relationships with key vendors such as Cox Automotive and its various solutions; negotiating the

terms of RCI agreements; and advising Mr. Brockman regarding the key matters at issue in this MDL.

24. Jerry Kirwan (SVP and General Manager, Reynolds). Mr. Kirwan has had a lead role in developing Reynolds' strategy with respect to dealer data, including managing Reynolds' relationships with key vendors such as Cox Automotive and its various solutions.

### **III. Search Terms**

Please find attached as Exhibit A (CDK) and Exhibit B (Reynolds) the additional search terms that the MDL Plaintiffs request that Defendants use in their ESI review.

\* \* \* \* \*

We look forward to your prompt response by Friday, June 1st. Please also let us know which time works on Tuesday, June 5th – either 10:00 a.m. ET or 2:00 p.m. ET, or some other time that day – to discuss any of the requested custodians and search terms that may be in dispute.

Very truly yours,

*s/ Derek T. Ho*  
Derek T. Ho

*s/ Peggy J. Wedgworth*  
Peggy J. Wedgworth

CC: MDL Counsel Email List

# **Exhibit 2**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: ) Docket No. 18 C 864  
)  
DEALER MANAGEMENT SYSTEMS )  
ANTITRUST LITIGATION. )  
) Chicago, Illinois  
) March 12, 2018  
) 1:30 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HONORABLE AMY J. ST. EVE

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23 Also Present:

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MR. MAYER GRASHIN, CDK  
MR. JONATHAN EMMANUAL,  
Reynolds and Reynolds

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3 Court Reporter:

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MR. JOSEPH RICKHOFF

Official Court Reporter

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\* \* \* \* \*

PROCEEDINGS RECORDED BY

MECHANICAL STENOGRAPHY

TRANSCRIPT PRODUCED BY COMPUTER



1 THE CLERK: 18 C 864, In Re: Dealer Management  
2 Systems Antitrust Litigation.

3 THE COURT: Good afternoon.

4 MR. BARZ: Good afternoon, your Honor, Jim Barz on  
5 behalf of the plaintiff Baystate Ford. I'm going to introduce  
6 some of the folks in my group, if you will.

7 You've got myself and Zan Bernay from Robbins,  
8 Geller.

9 MS. BERNAY: Good afternoon, your Honor.

10 THE COURT: Good afternoon.

11 MR. BARZ: You've got Bob Kaplan, the Kaplan law  
12 firm.

13 THE COURT: And if you would stand, please, just  
14 because there are a lot of people in front of me to see.

15 MR. BARZ: We have Vickie Romanenko from the Cuneo  
16 firm, as well --

17 MS. ROMANENKO: Good afternoon, your Honor.

18 THE COURT: Good afternoon.

19 MR. BARZ: -- as well as John Cuneo.

20 THE COURT: Good afternoon.

21 MR. CUNEO: Good afternoon, your Honor.

22 MR. BARZ: We also have Marvin Miller.

23 MR. MILLER: Good afternoon, your Honor.

24 THE COURT: Good afternoon.

25 MR. BARZ: And those will be the folks from our group

1 that you may hear from today.

2 THE COURT: Okay. Thank you.

3 When you say "our group," how are you defining "our  
4 group"?

5 MR. BARZ: I mean the group that expects to file a  
6 motion for appointment as lead counsel on behalf of the  
7 dealership cases.

8 THE COURT: Okay.

9 And is that the 12-dealership or the 12 plus the four  
10 from the other?

11 MR. BARZ: That's the 12, yes.

12 THE COURT: Okay.

13 And, then, do we have representatives from  
14 Authenticom and --

15 MR. ISSACHAROFF: Yes, your Honor.

16 THE COURT: -- the other four dealerships, which is  
17 how you --

18 MS. WEDGWORTH: Your Honor, I'm also on behalf of the  
19 12 dealerships, as well. We don't have --

20 THE COURT: And you are?

21 MS. WEDGWORTH: Peggy Wedgworth on behalf of four  
22 dealerships. We filed two complaints.

23 I am also planning to make a motion for lead counsel  
24 of the 12 dealerships.

25 THE COURT: Okay.

1 MS. WEDGWORTH: And with me today, I also have Eric  
2 Gibbs.

3 THE COURT: Good afternoon.

4 MR. GIBBS: Good afternoon, your Honor, Eric Gibbs.

5 THE COURT: And, so, you are on behalf of the 12  
6 dealerships?

7 MS. WEDGWORTH: Yes, your Honor.

8 THE COURT: Okay.

9 And, then, is there someone here on behalf of  
10 Authenticom --

11 MR. ISSACHAROFF: Yes.

12 THE COURT: -- and the other four dealerships?

13 MR. ISSACHAROFF: Yes, your Honor, and MVSC and Cox  
14 Automotive.

15 THE COURT: Okay.

16 MR. ISSACHAROFF: Samuel Issacharoff. And with me  
17 today is Derek Ho and Michael Nemelka from the Kellogg, Hansen  
18 firm.

19 Also, we will be proposing to be lead counsel for the  
20 MDL.

21 And we have also Jennifer Gregor -- I have to look up  
22 the inform- -- Godfrey & Kahn firm in Wisconsin, who we will  
23 suggest as liaison counsel for the MDL.

24 And, then, with us, we have representatives of some  
25 of the dealership classes of the four in addition. So, we

1 have Michael --

2 MR. ROBERTS: Roberts.

3 MR. ISSACHAROFF: -- Roberts. I'm sorry.

4 MR. ROBERTS: Mike Roberts, your Honor.

5 MR. ISSACHAROFF: Michael Roberts of the Roberts Law  
6 Firm, who represents one of those dealerships.

7 We have Greg Asciolla, Karin --

8 MR. ASCIOLLA: Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 MS. GARVEY: Garvey.

11 MR. ISSACHAROFF: -- Garvey and Chris McDonald --

12 MR. McDONALD: Good afternoon.

13 MR. ISSACHAROFF: -- from Labaton Sucharow, who  
14 represent others.

15 And if I may, if the Court will indulge, I'd like to  
16 introduce also Steve Cottrell, who is in the back, who is the  
17 CEO of Authenticom. I believe he's the only stakeholder in  
18 the room.

19 And I think that's our whole team, if I'm not  
20 mistaken.

21 MR. GRUBB: I'll introduce myself. I'm Archie Grubb  
22 from the Beasley, Allen firm.

23 THE COURT: Would you give me the last name again,  
24 please. Grubb?

25 MR. GRUBB: Grubb, G-r-u-b-b.

1 THE COURT: Thank you.

2 MR. GRUBB: Thank you.

3 MR. ISSACHAROFF: I think that's our whole group.

4 THE COURT: Anybody else who wants to be introduced  
5 on behalf of any plaintiffs?

6 MR. HEDLUND: Good afternoon, your Honor, Dan Hedlund  
7 with co-counsel Ken Wexler, Michelle Looby and Dave Goodwin,  
8 here on behalf of Waconia Dodge. We were listed in the status  
9 report as a tag-along case. We just filed late last week, and  
10 I believe that the case has been assigned to you.

11 THE COURT: Is that the case that was filed on March  
12 8th?

13 MR. HEDLUND: Yes.

14 THE COURT: Yes. I believe that has been transferred  
15 over and is part of the MDL now.

16 MR. HEDLUND: Okay.

17 THE COURT: I think all the paperwork went through on  
18 that.

19 MR. HEDLUND: We've just sort of joined in and we're  
20 going to sort of see what happens, and we'll decide where to  
21 go from there.

22 THE COURT: Okay.

23 MR. HEDLUND: Thank you.

24 MR. BARZ: And, your Honor, I guess I should also  
25 point out Bob Clifford is here, as well. He's on the

1 complaint with Mr. Cuneo, who is part of our group.

2 MR. CLIFFORD: Good afternoon, your Honor.

3 THE COURT: It is not like Mr. Clifford to be in the  
4 back of the courtroom quiet.

5 (Laughter.)

6 MR. CLIFFORD: I'm just watching around.

7 (Laughter.)

8 THE COURT: Good afternoon, Mr. Clifford.

9 MR. CLIFFORD: Thank you, your Honor.

10 THE COURT: Anybody else?

11 (No response.)

12 THE COURT: Okay. Ms. Miller, it is your turn after  
13 all of that. Go ahead.

14 MS. MILLER: Good afternoon, your Honor, Britt Miller  
15 on behalf of the CDK defendants and Computerized Vehicle  
16 Registration, and with me is my partner Mark Ryan.

17 THE COURT: Good afternoon.

18 MR. RYAN: Good afternoon, your Honor.

19 MS. MILLER: That's it for us.

20 THE COURT: Okay.

21 MS. GULLEY: Good afternoon, your Honor, for The  
22 Reynolds and Reynolds Company, Aundrea Gulley from Gibbs &  
23 Bruns. I'm here with my partners Kathy Patrick, Brian Ross,  
24 as well as Leo Caseria from Sheppard, Mullin and Assistant  
25 General Counsel for Reynolds, Jonathan Emmanuel.

1 THE COURT: Good afternoon.

2 MS. PATRICK: Good afternoon, your Honor.

3 MR. ROSS: Good afternoon, your Honor.

4 THE COURT: Anybody else in the courtroom who wants  
5 to introduce him or herself?

6 MR. GRASHIN: Your Honor, Mayer Grashin with CDK.

7 THE COURT REPORTER: Can you say that again, please,  
8 sir. I can't hear.

9 MR. GRASHIN: Mayer M-a-y-e-r, last name Grashin,  
10 G-r-a-s-h-i-n, at CDK Corporation.

11 THE COURT: All right.

12 Well, you are here for your initial status before  
13 this Court to bring some organization to the recently assigned  
14 MDL.

15 I did receive your joint status report. Thank you  
16 for submitting that.

17 I have some issues for you, some questions for you.  
18 You probably have some for me, as well.

19 Ms. Miller, thank you. I know you helped coordinate  
20 some of these things. So, thank you for doing that.

21 The first thing I need to tell you is that the  
22 documents from these other MDL cases are not automatically  
23 transferred to my docket. So, you noted in the Authenticom  
24 case that there is a motion to dismiss pending. I do not have  
25 any of that.



1 MS. MILLER: We plan to refile it with your Honor.

2 THE COURT: So, my question for you is -- and I am  
3 not sure of the timing of when you filed that versus the  
4 Seventh Circuit's opinion on the preliminary injunction -- if  
5 you want to refile the exact same briefing or if you want to  
6 update your motion at all. I do not care. I am just going to  
7 give you some deadlines, depending on what you want to do.

8 MS. MILLER: From our standpoint, your Honor,  
9 briefing is closed and we're happy to refile.

10 THE COURT: Okay.

11 MS. MILLER: We think that on both Authenticom and  
12 the MVSC, where actually oral argument was heard, that the  
13 briefing record is closed on both and we can simply refile the  
14 existing briefs with your Honor, and your Honor can rule.

15 THE COURT: And are there two -- how many motions to  
16 dismiss are there pending in other cases that have been sent  
17 here?

18 MS. MILLER: There are --

19 MS. GULLEY: There's four.

20 MS. MILLER: Well, we each -- there's motions --  
21 there's two motions to dismiss in two cases.

22 THE COURT: Okay.

23 MS. MILLER: One in Authenticom. There's a motion to  
24 dismiss by CDK, and there's a motion to dismiss by Reynolds.

25 In the MVSC matter, there are motions to dismiss by

1 CDK, by Reynolds, and by Computerized Vehicle Registration or  
2 CVR.

3 THE COURT: Okay.

4 If you could please get the briefing -- and I assume  
5 there will not be any objection from the plaintiff if you just  
6 take all of the briefing and refile the motion, the response,  
7 the reply; and, the one where there was oral argument, if you  
8 would file the transcript.

9 I know you identified it --

10 MS. MILLER: Yeah.

11 THE COURT: -- but, again, I cannot get into those.

12 MS. MILLER: We'll refile.

13 THE COURT: I always think with MDLs there should be  
14 a better way to give us access --

15 MS. MILLER: Sure.

16 THE COURT: -- to the files, but that has not been  
17 quite figured out yet.

18 So, if you would, please, by the end of the week --

19 MS. MILLER: Yep.

20 THE COURT: -- refile all of the briefing, including  
21 any oral argument transcripts, on this docket. I was not even  
22 aware there were motions to dismiss. So that I can turn to  
23 those.

24 MS. MILLER: We'll take care of it right away.

25 THE COURT: Great. Thank you.

1 MS. MILLER: Yep.

2 THE COURT: And, then, for the dealerships -- the 12  
3 dealerships -- it looks as if you want to file a consolidated  
4 amended complaint on behalf of the dealerships. Defendants  
5 think it should be one. There may be some dispute among the  
6 plaintiffs' attorneys.

7 I think it should be one. It is just much easier to  
8 deal with that way. You can have multiple subparts, multiple  
9 classes, whatever you want; but, I prefer one motion.

10 Yes? Did you want to jump in there? You look like  
11 you want to say something.

12 MR. KAPLAN: Of course, your Honor, we'll --

13 THE COURT: Identify, if you are speaking -- just  
14 because we are not familiar with all of you yet, identify your  
15 name, please.

16 MR. KAPLAN: I'm Robert Kaplan, Kaplan, Fox &  
17 Kilsheimer, LLP. I'm -- Mr. Barz.

18 We will, of course, do what your Honor said. Our  
19 thought -- and it's still developing -- that because there is  
20 an arbitration clause with Reynolds, we might possibly want to  
21 do one complaint for the CDK dealers which would name Reynolds  
22 and CDK, and a second complained for the Reynolds dealers  
23 which would only name CDK. We can put it all in one  
24 complaint, but I think my worthy colleagues might argue that  
25 the arbitration issues are more intertwined.

1           So, we haven't decided, but we would like possibly  
2 the option to consider something like that.

3           THE COURT: My inclination --

4           MR. KAPLAN: But if your Honor wants one complaint,  
5 of course that's what we'll do.

6           THE COURT: My inclination would be to do one, and  
7 then we can address if we need to sever it, or whatever we  
8 need to do, based on arbitration clauses. But it is always  
9 easier and cleaner to work off of one where possible. And  
10 given the allegations here, one seems to make sense to me.

11          MR. KAPLAN: That's fine, your Honor.

12          THE COURT: So, that is my preference. If I am  
13 missing something or you --

14          MR. KAPLAN: That's what we'll do.

15          THE COURT: My preference is to do one.

16          MR. KAPLAN: That's what we'll do. Thank you.

17          THE COURT: And I will give you some dates for  
18 things --

19          MR. KAPLAN: Thank you.

20          THE COURT: -- before you leave here today.

21                The arbitration clauses, that was mentioned in the  
22 joint status report, as well. Can you shed any light for me  
23 on those? And have any of those issues been litigated in the  
24 other courts out in California or Wisconsin yet?

25          MS. GULLEY: No, your Honor. They haven't been

1 litigated before.

2           The Reynolds arb- -- Reynolds' contracts with its  
3 dealers and vendors have arbitration clauses negotiated with  
4 the automotive dealerships. And, so, we'll be moving to  
5 compel arbitration. But the dealership complaints have only  
6 just been filed. So, none of that's been litigated.

7           THE COURT: Okay.

8           And is there a dispute about the arbitration clause?  
9 Is that something that is going to be litigated or is there  
10 agreement that the arbitration clause will control on the  
11 Reynolds cases?

12           MR. KAPLAN: I would like to reserve on that, your  
13 Honor.

14           THE COURT: Okay.

15           MR. KAPLAN: There's some -- the language is somewhat  
16 ambiguous. But if we could just reserve on that for another  
17 day.

18           THE COURT: Yes, you may.

19           You may want to -- and I have not seen any of these,  
20 but just given the scope of this case and the MDL nature of  
21 it, you may want to have some preliminary discussions about  
22 who to arbitrate it. I do not know if that is covered in the  
23 provision or not or if you have to agree on an arbitrator, but  
24 you may not want to wait for those discussions, because I know  
25 sometimes those can delay if it is going to go forward that

1 way.

2 MS. GULLEY: Understood. Thanks, your Honor.

3 THE COURT: Do any of you anticipate any other  
4 tag-along cases?

5 You are probably in a better position to know that.

6 MS. MILLER: We're currently not aware of any. But  
7 we just found out about the one that was filed on the 8th when  
8 it was filed. So, we've not been put on notice of any, but  
9 these -- all these guys might know better.

10 MS. WEDGWORTH: Your Honor, I'm not aware of any  
11 right now; but, given the fact that some have been trickling  
12 in each week, it would not surprise us that more are filed in  
13 the next couple weeks.

14 THE COURT: Mr. Barz, are you --

15 MR. BARZ: I think --

16 THE COURT: -- aware of any out there?

17 MR. BARZ: -- in terms of -- I'm not aware of any.  
18 But in terms of leadership, I think you should choose from  
19 those that are filed. I don't think it --

20 THE COURT: That is a separate issue.

21 MR. BARZ: Sure.

22 THE COURT: I am just trying to figure out for --

23 MR. BARZ: Well, sometimes it's not, because people  
24 get others to file to lend a hand.

25 THE COURT: That is a separate issue for the purposes

1 of what I am addressing now. We will talk about --

2 MR. BARZ: Sure.

3 THE COURT: -- leadership in a bit. But I am just  
4 trying to get my arms around what else might be coming in.

5 MR. HO: Your Honor --

6 THE COURT: Yes, Mr. Ho?

7 MR. HO: -- Derek Ho from Kellogg, Hansen.

8 We do anticipate having another action by a vendor  
9 similar to the action that was brought by Cox Automotive.  
10 It's obviously not on file yet, but we do anticipate that.

11 THE COURT: Okay.

12 And you are just going to file that here as a  
13 tag-along; is that correct?

14 MR. HO: We are not quite sure. We're still talking  
15 with our client about that particular issue.

16 THE COURT: In light of the MDL's order and the order  
17 I have entered, it might make sense, rather than filing it in  
18 some other state and going through the process of coming here,  
19 that you can file directly here.

20 MR. HO: That's certainly something we're  
21 considering, your Honor.

22 MR. GIBBS: Your Honor, it's Eric Gibbs.

23 I don't want to surprise the Court, but we have a  
24 growing number of dealership clients. So, I anticipate we'll  
25 file at least one additional class case. And, of course,



1 we'll procedurally set that so it's as simple as possible and  
2 try to avoid the delay by the MDL.

3 THE COURT: Mr. Gibbs or Mr. Ho, do you have any  
4 sense of timing on these additional complaints? Do you expect  
5 it this month?

6 MR. GIBBS: Yes, by the end of this month. I think  
7 that's fair.

8 MR. HO: Same here, your Honor.

9 THE COURT: Okay.

10 Anybody else aware of any tag-alongs?

11 (No response.)

12 THE COURT: All right.

13 So, a consolidated amended complaint, when do you  
14 think you will be ready to file that?

15 MR. KAPLAN: Robert Kaplan.

16 We propose 60 days after appointment of lead counsel.

17 THE COURT: Okay.

18 Was there any dispute on that timing?

19 MS. MILLER: We didn't have any objection to the 60  
20 days, your Honor.

21 THE COURT: And, then, I know you proposed 45 days  
22 after to answer or otherwise plead.

23 MS. MILLER: Yes, your Honor.

24 THE COURT: Which is fine.

25 MS. MILLER: The only thing the parties were not able

1 to agree on was, in the event we move to dismiss, a briefing  
2 schedule.

3 THE COURT: And I can wait and see what the motion  
4 looks like --

5 MS. MILLER: That's great.

6 THE COURT: -- before setting a briefing schedule.

7 And, then, answers, it looks like you were in  
8 agreement: 28 days after the Court rules on the motion to  
9 dismiss.

10 MS. WEDGWORTH: Yes, your Honor.

11 THE COURT: Which I will put that in place, as well.

12 MS. MILLER: And, your Honor, we just want to make it  
13 clear that to the extent your Honor allows it to -- you know,  
14 them to replead, it would be -- we'd obviously wait to answer  
15 until the whole thing was decided.

16 THE COURT: Absolutely.

17 MS. MILLER: Great.

18 THE COURT: And I would give further direction on  
19 that in any ruling.

20 MS. MILLER: Perfect. Thank you.

21 THE COURT: When do you anticipate, Ms. Gulley, on  
22 behalf of Reynolds, filing motions to compel arbitration?

23 MS. GULLEY: We anticipate, your Honor, filing them  
24 at the same time on the same schedule as the motions to  
25 dismiss --

1 THE COURT: Okay. That is what I thought.

2 MS. GULLEY: -- if that's all right with your Honor.

3 THE COURT: That is fine.

4 And we are talking about the 12-dealership now. I do  
5 not know if you have motions -- if the arbitration provision  
6 is going to be raised with respect to the other set of class  
7 plaintiffs at all.

8 MS. GULLEY: So, any dealers that are Reynolds  
9 customers, it would apply to those, as well.

10 There are currently no vendors suing Reynolds. The  
11 Cox complaint is not filed against Reynolds. And not all of  
12 the dealers have --

13 THE COURT: Right.

14 MS. GULLEY: -- filed all the claims against  
15 Reynolds. However, if the new one we just heard about from  
16 Mr. Ho involves Reynolds, that would also be subject to the  
17 same issue.

18 THE COURT: Okay.

19 So, I will give you some specific deadlines. I am  
20 fine with the 60 days after appointment. I will give you some  
21 specific deadlines when we talk at the end this morning -- or  
22 this afternoon -- about appointment of lead counsel. Before I  
23 get into that, though, let's talk about the protective order.

24 So, there is already a protective order in place in  
25 the Authenticom cases up in Wisconsin, correct?

1 MS. MILLER: Yes, your Honor. There was a protective  
2 order entered by -- an agreed protective order entered by --  
3 the parties in that case and entered by the Court, and the  
4 parties have produced documents pursuant to that protective  
5 order.

6 THE COURT: And have both defendants produced -- are  
7 you a party and --

8 MS. GULLEY: Yes, your Honor, both --

9 THE COURT: -- subject to that protective order?

10 MS. GULLEY: Both defendants, yes, your Honor.

11 THE COURT: Does that protective order cover ESI --

12 MS. MILLER: Yes.

13 THE COURT: -- production and protocol, as well?

14 MS. GULLEY: It's a separate --

15 MS. MILLER: We have -- we had a separate ESI  
16 protocol that was entered by Judge Peterson, also agreed, that  
17 sets out all of the various metadata and characteristics; and,  
18 we have produced documents in accordance with that  
19 stipulation.

20 MS. GULLEY: Well, although most of our production so  
21 far have been just reproduction --

22 MS. MILLER: Correct.

23 MS. GULLEY: -- of prior government productions.

24 THE COURT: Right. That is what you represented.

25 And you are working on a protective order for the

1 MDL?

2 MS. MILLER: We've --

3 MS. WEDGWORTH: Yes, your Honor.

4 MS. MILLER: -- been told by some of the plaintiffs  
5 that they have some objections -- we do not know what they are  
6 -- to the Authenticom order, and that they are going to  
7 propose some changes to that. We've agreed to hear them  
8 out --

9 THE COURT: Okay.

10 MS. MILLER: -- and see if there are any -- if we  
11 agree any modifications need to be made. If not, we'll bring  
12 those issues to your Honor.

13 MS. WEDGWORTH: Your Honor, Peggy Wedgworth.

14 We have looked at it. We've edited it among  
15 ourselves. And as you can see, it's a large group. So, it's  
16 hard to get all the comments in.

17 The simple question from defendants was: Are the  
18 edits bigger than a bread box? And I think the answer is yes.

19 So, we have something in the works, both on ESI and  
20 protective order. And given we didn't participate there, we  
21 do plan to get them comments as soon as possible, because if  
22 there's still disagreement by March 30th, we'll bring it to  
23 the Court.

24 MS. MILLER: And, your Honor, I mean, our biggest  
25 concern is that what we've already produced is protected by

1 the orders that are currently in place and we won't have to --

2 THE COURT: And it will be. It will be.

3 Any documents that the defendants have already  
4 produced subject to the protective order in the Authenticom  
5 case will remain subject to that protective order. And out of  
6 fairness -- you have relied on that -- that is only  
7 appropriate.

8 The protective order here -- I do not know what your  
9 issues are. There is a form protective order in the Northern  
10 District of Illinois forms. But if there is one in place, I  
11 do not know if Wisconsin has a form protective order --

12 MS. MILLER: We took the Northern District of  
13 Illinois form into account as we were negotiating the one in  
14 the Western District simply because it was one of the few --  
15 this district is one of the few that has a form. So, we used  
16 it as a basis in the negotiations. It's certainly not  
17 identical, but there are elements of it. And I think all of  
18 the things that are addressed in the form are addressed in  
19 this order.

20 THE COURT: Okay. I was going to direct you to look  
21 at that in your discussions.

22 MS. WEDGWORTH: And we have. We've taken that into  
23 account. But as she said, some of the changes made affect new  
24 thoughts, as well, and new procedure and permutations. And  
25 we're addressing that from our standpoint. Since we're

1 dealerships, it's a little bit of a different dynamic.

2 MR. BARZ: So --

3 THE COURT: One second.

4 Is there a protective order in the California case,  
5 as well?

6 MS. GULLEY: Yes, your Honor. The Authenticom one  
7 was the --

8 MS. MILLER: It wasn't entered.

9 MS. GULLEY: Oh, it wasn't entered?

10 MS. MILLER: No.

11 MS. GULLEY: It didn't get there.

12 THE COURT: And there is no protective --

13 MS. WEDGWORTH: And we took that one, too. We've  
14 looked at the one in California, which actually, for instance,  
15 has definitions, whereas the Northern District of Illinois did  
16 not and the Wisconsin does not. So, we've -- those are the  
17 kinds of things we're inserting to incorporate all of these  
18 issues.

19 THE COURT: And I will let you work on that and see  
20 if you can reach agreement.

21 So, the one in California was not entered, correct?

22 MS. MILLER: I don't believe so. It was --

23 THE COURT: Have you produced any documents?

24 MS. MILLER: It was entered. I'm told it was  
25 entered.



1 THE COURT: My bigger question is: Have you produced  
2 any documents pursuant --

3 MS. MILLER: No.

4 THE COURT: -- to that protective order?

5 MS. MILLER: No.

6 THE COURT: All right. So, it is only the  
7 Authenticom protective --

8 MS. MILLER: Correct.

9 THE COURT: -- order that you produced documents.  
10 So, anything that you produced pursuant to that  
11 protective order will be covered by that protective order.  
12 And I will wait and see -- I am going to give you until March  
13 30th to hopefully file an agreed protective order with the  
14 Court; and, if you cannot agree, you can file a motion and I  
15 will resolve it. But I am hoping that -- you are all  
16 professional and experienced in --

17 MR. BARZ: Your Honor --

18 THE COURT: -- these complex cases -- that you can  
19 agree.

20 Yes, Mr. Barz?

21 MR. BARZ: To put a small point on that, because the  
22 discussions about the protective order and ESI are not  
23 vis-a-vis the Northern District of Illinois standard terms.  
24 It's more because that was negotiated between competitors with  
25 Authenticom suing them as a competitor, but we are now the

1 dealers. So, there's some nuances and things that we think  
2 are not applicable to us, like attorneys' eyes -- certain  
3 provisions that you would negotiate with a competitor that  
4 wouldn't necessarily be applicable to the dealers, as well as  
5 certain protections we need for our data that weren't  
6 anticipated by the competitor.

7 So, those are the things --

8 MS. MILLER: We're certainly happy to entertain if  
9 there's certain protections they need for their clients. We  
10 would certainly believe that there is absolutely a necessary  
11 for an outside "attorneys' eyes only."

12 MS. GULLEY: Our clients are --

13 MS. MILLER: Are competitors.

14 MS. GULLEY: -- competitors.

15 MS. MILLER: And, so --

16 THE COURT: I am not saying that you should agree on  
17 the Authenticom protective order, because I do not know what  
18 it looks like. So, I am just saying I hope that whatever your  
19 final product looks like, that you can agree on it, file it  
20 with the Court by March 30th; and, if not, you can file a  
21 motion and I will address it then and see what your  
22 differences are. But not having seen the protective order, I  
23 cannot even give you any general thoughts on it.

24 But, again, you are all professionals and this is not  
25 your first time doing this. So, hopefully you can reach

1 agreement on it so that we can move things along.

2 On an ESI order --

3 Was this about the protective order or something  
4 else?

5 MS. ROMANENKO: Protective order.

6 THE COURT: Sure. Go ahead. And tell me your name  
7 again, please.

8 MS. ROMANENKO: Victoria Romanenko from Cuneo,  
9 Gilbert & LaDuca.

10 So, your Honor, we're not seeking to take away any  
11 protections that the defendants' documents are already  
12 receiving under the Authenticom protective order. And even  
13 the new version that we will negotiate will include the two  
14 tiers of protection on the "attorneys' eyes only" designation.

15 What our concern is, is that we're going to have one  
16 dealership action and some documents in it will be subject to  
17 one order, some will be subject to another's. Every time we  
18 have a filing and attach exhibits, we have to think, is this  
19 exhibit subject to this order? Is this exhibit subject to  
20 that order? Which provisions do we follow? And we think  
21 that's going to be very confusing.

22 So, our concern is just that once the protective  
23 order is entered that we've all had a chance to negotiate,  
24 that all the documents that are produced in our action are  
25 subject to that order, including those ones that the

1 defendants are reproducing from the other actions or the FTC  
2 investigation.

3 THE COURT: Well, I anticipate that that will be  
4 something that you discuss when you have your discussions  
5 about the new protective order here. And maybe you agree and  
6 put something in place with respect to your prior productions.

7 I am just saying for purposes of now -- you can  
8 certainly agree otherwise, but for purposes of now -- anything  
9 that has been produced pursuant to that other protective order  
10 will stay pursuant to that.

11 I share what you are saying. That makes sense. But  
12 see if you could reach agreement on that.

13 MS. ROMANENKO: Okay.

14 And if we won't, we can just submit it as part of the  
15 briefing on the protective order issue, whether it's  
16 prospective or not.

17 THE COURT: That would be helpful to have in any  
18 event, regardless of what your disputes are, just to see what  
19 the other one looks like.

20 MS. ROMANENKO: Thank you.

21 THE COURT: Does the current protective order -- you  
22 said it does cover ESI but not protocol?

23 MS. MILLER: No, there's two separate orders, your  
24 Honor. There's a confidentiality order that was entered, and  
25 then there is an ESI stipulation and protocol that covers all

1 of the ESI protocols, including metadata fields and all of the  
2 stuff that the ESI protocols here in the Northern District  
3 contemplate.

4 THE COURT: Okay.

5 And have you had discussions about an ESI protocol in  
6 this case?

7 MS. MILLER: It's the same story. We've been told  
8 that the dealer --

9 MS. WEDGWORTH: Second chapter.

10 MS. MILLER: -- the dealer plaintiffs have some  
11 proposed changes. We do not know what those are. But there  
12 again, we don't want to be in a situation where we're having  
13 to, you know, redo anything, and that what we have done stays  
14 for the documents we have produced.

15 THE COURT: Will you --

16 MR. BARZ: Part --

17 THE COURT: -- be in a position by March 30th to file  
18 something --

19 MS. WEDGWORTH: Yes.

20 THE COURT: -- with respect to ESI, as well?

21 MS. WEDGWORTH: Yes.

22 MR. BARZ: I think either set of the proposed leads  
23 would be in that position. The question, of course, is when  
24 half of us, one side or the other, drops out of this, then it  
25 will be easier for the defendants get one set of edits. It's

1 a little bit cumbersome with all the folks in the room having  
2 thoughts.

3 THE COURT: Well, one quality in lead counsel is  
4 somebody who can work together with everybody. So --

5 MR. BARZ: And we've all tried that terrifically so  
6 far in terms of the --

7 THE COURT: That is important.

8 MS. MILLER: From our standpoint, we're happy -- as  
9 we said, we're happy to meet and confer with them, but we  
10 obviously need it more than the 29th in order to meaningfully  
11 respond and prepare a paper. So, if your Honor would like to  
12 set an interim date by when we need to exchange; but, if not,  
13 we'll simply go forward and if we have any disputes, we'll  
14 bring them to you.

15 THE COURT: When will you be in a position to turn  
16 over proposals?

17 MR. McDONALD: Your Honor, this is Chris McDonald  
18 from Labaton Sucharow on behalf of Bob Baker.

19 Part of the issue that we have here is there are  
20 separate groups within the plaintiffs' dealers on it. So, the  
21 sooner that issue is decided, I think the sooner we'll be able  
22 to move forward on all these issues.

23 THE COURT: We will talk about it, then, at the end.

24 MS. WEDGWORTH: We've edited it. We -- at least some  
25 and waiting on comments. So, if today is the 12th --

1 THE COURT: Yes.

2 MS. WEDGWORTH: So --

3 THE COURT: Can you send it by Friday?

4 MS. WEDGWORTH: -- a week from today, next Monday, we  
5 can get it by 5:00 o'clock to defense counsel.

6 THE COURT: Great. So, send over your draft with  
7 your proposals, joint by the plaintiffs, by March 19th at 5:00  
8 o'clock Central Time.

9 MS. WEDGWORTH: Done.

10 MS. MILLER: Thank you, your Honor.

11 MS. GULLEY: Thank you, your Honor.

12 THE COURT: And same with the ESI, please.

13 MS. WEDGWORTH: Yes.

14 THE COURT: Send that over, as well.

15 There is a question now in terms of discovery and  
16 going forward and the Authenticom case wanting -- some  
17 discovery has already been done -- and wanting to move faster  
18 in light of the circumstances. And I have your proposals --

19 MR. KAPLAN: May I speak to this?

20 MR. ISSACHAROFF: I represent Authenticom; you don't,  
21 Bob.

22 MR. KAPLAN: Oh.

23 MR. ISSACHAROFF: If I may?

24 MR. KAPLAN: Oh, sure. Please.

25 MR. ISSACHAROFF: Thank you.

1 MR. KAPLAN: Excuse me.

2 THE COURT: What I do not know from your joint status  
3 report is --

4 MR. KAPLAN: I'm trying to support you.

5 THE COURT: Just hold on.

6 What I do not know from your joint status report is  
7 what discovery has already been exchanged in Authenticom, how  
8 far along you are. If it is just -- it sounded like maybe it  
9 was just some written, not all written, and no ESI and nothing  
10 oral yet.

11 MS. GULLEY: That's right, your Honor.

12 MR. ISSACHAROFF: That is --

13 MS. MILLER: Your Honor, what we've exchanged is --  
14 since we're the ones that have produced the most, I can say we  
15 have exchanged -- each exchanged -- one set of document  
16 discovery. There have been some supplemental requests to  
17 that. I think there have been a handful of interrogatories  
18 that have been served by one party.

19 But as Ms. Gulley noted before, all of the document  
20 productions that have been done thus far are reproductions of  
21 existing government productions, all but a handful. So,  
22 there's been no depositions, no expert discovery, anything of  
23 that sort.

24 THE COURT: Have --

25 MR. ISSACHAROFF: Your Honor, I don't think --



1 THE COURT: -- interrogatories been --

2 MR. ISSACHAROFF: -- from my perspective --

3 THE COURT: Have interrogatories been issued?

4 MS. MILLER: One set of interrogatories was issued by  
5 us --

6 THE COURT: Did plaintiffs issue any?

7 MS. MILLER: -- to plaintiff.

8 THE COURT: Did plaintiffs issue any to you?

9 MS. MILLER: No.

10 THE COURT: Okay.

11 Yes, go ahead.

12 MR. ISSACHAROFF: We disagree on the percentage of  
13 the documents that are overlap, but that's not really  
14 important right now.

15 The -- what we have is requests for production of  
16 documents. There's several hundred thousand -- 300,000 and  
17 change -- and over a million. That's been gone through. We  
18 were at the point of noticing depositions, and we were ready  
19 to go forward with that when we got the stay order in the MDL  
20 order.

21 So, we are at the point, speaking for Authenticom,  
22 that we are prepared to immediately commence discovery, and we  
23 think we should be able to immediately commence discovery, and  
24 with the anticipation that we could hold to as close to our  
25 trial date -- original trial date -- as possible.

1 THE COURT: Do you not expect to issue  
2 interrogatories?

3 MR. ISSACHAROFF: We will issue interrogatories.

4 But, your Honor, we are in a position where we are  
5 more eager to go to trial than we are to engage in extensive  
6 discovery. We could be ready for trial with surprisingly  
7 little additional discovery over what we have now. We have --

8 THE COURT: Defendants may disagree with that, but --

9 MR. ISSACHAROFF: They might disagree with that, but  
10 not on the liability phase. I don't think that anything that  
11 we have done goes to the question of whether they conspired,  
12 whether they tried to shut us out of the market. I don't  
13 think that there's any claim here that we are a joint tort  
14 feisor of some kind in this process.

15 So, with regard to liability, we are prepared to move  
16 very quickly, even if that costs us some of the normal range  
17 of discovery that we would have.

18 As the Seventh Circuit noted, we're representing a  
19 client in Authenticom that is at grave risk of going out of  
20 business through the normal processes of delay when a business  
21 is failing.

22 THE COURT: I am certainly sympathetic to that, but I  
23 also know that the Seventh Circuit noted, without addressing  
24 any of the merits, that there may be viable defenses here.

25 So --

1 MS. GULLEY: Right, your Honor.

2 THE COURT: -- I appreciate both sides, and we will  
3 try to accommodate that. But before putting any deadlines in  
4 place, I am trying to get a sense of what has been done --

5 MR. ISSACHAROFF: That's all that's been done.

6 THE COURT: -- and what remains to be done.

7 MS. MILLER: And --

8 THE COURT: Have you produced any documents on behalf  
9 of plaintiffs?

10 MR. HO: Yes, we have, your Honor. We've produced  
11 documents to the plaintiffs. Obviously, our document  
12 discovery is not going to be nearly as voluminous as the  
13 defendants'. But, yes, we've produced documents.

14 We have received more than three -- about 350,000  
15 documents. I'm a little bit surprised to hear that those  
16 consist almost solely of reproductions of the productions to  
17 the government because that's quite the opposite of what the  
18 defendants have been representing to us as they've been sort  
19 of resisting additional discovery.

20 But the bottom line is that there has been extensive  
21 document production going both ways; we've reviewed a lot of  
22 those documents; and, we feel like we've identified the ones  
23 that are critical to the case, which is why we had 12  
24 depositions scheduled on January 12th, when Judge Peterson put  
25 the stay in place. So, we were on the cusp of going from the

1 document discovery phase to the oral discovery phase.

2 THE COURT: Did you have discovery in connection with  
3 the preliminary injunction hearing? Was there expedited  
4 discovery?

5 MS. MILLER: No.

6 MS. GULLEY: No, your Honor.

7 MR. HO: There was no discovery as such under Rule  
8 26; but, in support of the defendants' preliminary injunction  
9 papers, there were voluminous attachments. And, so, much of  
10 the record in the preliminary injunction proceeding -- which  
11 consisted of about 350 exhibits -- were documents that the  
12 parties attached to their paper. So, there was discovery in  
13 that regard.

14 THE COURT: Okay.

15 MS. GULLEY: Your Honor, just real briefly in  
16 response, because the motions to dismiss in Authenticom have  
17 been fully briefed and pending since October, Reynolds has not  
18 yet filed its counterclaims against Authenticom.

19 But just to take issue with counsel's statement,  
20 there are certainly are questions -- and you'll hear it in the  
21 oral argument in the Seventh Circuit -- regarding  
22 Authenticom's violations of the Computer Fraud and Abuse Act  
23 by accessing their system. Those counterclaims have not been  
24 filed. No discovery has been served on that yet.

25 MS. MILLER: And just to briefly respond to some of

1 the assertions, if you look at the production, since the  
2 majority of the production has been made by my client, they're  
3 clearly marked as having been produced in the prior government  
4 proceedings.

5           We -- on the expedited schedule that we had where  
6 Authenticom had noticed 12 depositions, we had -- we were on  
7 an expedited schedule at that point, which was one of the  
8 reasons that we asked for the stay. We had produced documents  
9 related to one of the custodians that was coming up for  
10 deposition because we had agreed to produce them as  
11 depositions were coming up. So -- but with the exception of  
12 that one custodian, all of the other documents that we had  
13 produced -- which is the majority of that 300,000 -- were  
14 documents that had been previously produced in the government  
15 proceedings.

16           So, I'm not saying that's not a comprehensive set of  
17 documents, and I have no doubt that they will have all sorts  
18 of documents available to them and -- but discovery certainly  
19 is not done insofar as Reynolds hasn't filed its  
20 counterclaims, CDK hasn't filed its; and, we haven't had a  
21 chance to do any of this in terms of -- vis-a-vis the other  
22 dealer plaintiffs. And we obviously need to be in a position  
23 where we're doing this once.

24           THE COURT: Has any discovery been exchanged with the  
25 other 12 dealers?

1 MS. WEDGWORTH: No.

2 MS. MILLER: No.

3 MR. HO: No, your Honor.

4 THE COURT: Have you issued any?

5 MS. WEDGWORTH: No, your Honor.

6 MR. BARZ: No.

7 MR. HO: And, your Honor, if I may just add one thing  
8 -- it may be clear from the status report -- is that when  
9 discovery was stayed on January 12th of 2018, the case was on  
10 track for trial in October, 2018.

11 THE COURT: Right.

12 MR. HO: And Chief Judge Peterson had made very clear  
13 that that trial date was not going to move. So, wherever we  
14 were in discovery, I think it's fair to say that both sides  
15 anticipated that we would be able to complete the discovery  
16 process in the nine months or so between January and October.

17 MS. GULLEY: We just disagree.

18 MS. MILLER: I don't think that's a fair statement.  
19 We had talked to the other side in terms of potentially seek-  
20 -- we reserved the right to seek an extension of that  
21 schedule, given the amount of discovery that we were being  
22 told was going to be asked of us. And we got 30(b)(6)  
23 depositions -- deposition notices -- that had 156 subparts.  
24 So, the chances of that being resolved and done and expert  
25 reports out, from our standpoint, were slim.

1 But we understand that Authenticom was pushing  
2 towards its trial date; but, ultimately, when these other  
3 cases got filed, Judge Peterson entered the stay order that he  
4 did and said, look, these cases have to be -- have to take  
5 into account the MDL process.

6 THE COURT: Is the Authenticom case a class case,  
7 too?

8 MR. HO: No, your Honor.

9 THE COURT: It is not a class.

10 MR. HO: It's an individual competitor case.

11 THE COURT: Okay.

12 MR. HO: Yes, there's no class component.

13 MR. ISSACHAROFF: Authenticom has a unique role in  
14 this hierarchy of proceedings. So, there wouldn't be a class  
15 there.

16 THE COURT: Okay.

17 MR. HO: But I would say the claim of Authenticom  
18 having been excluded from the market is the linchpin of all  
19 the other cases, including the class cases.

20 MR. ISSACHAROFF: It's how the vendors got out shut  
21 out --

22 THE COURT: Right.

23 MR. ISSACHAROFF: -- is how all this happens.

24 THE COURT: I have read your complaint.

25 Okay. Before I give you some discovery guidance,

1 let's talk about lead counsel and lead counsel structure.

2 MR. ISSACHAROFF: If I may, your Honor?

3 THE COURT: Yes.

4 MR. ISSACHAROFF: We have a proposal on this, and I  
5 think that there may be some confusion in the documents  
6 between lead counsel for purposes of the MDL and the  
7 subsequent appointment of interim lead or co-lead class  
8 counsel pursuant to 23(g).

9 We have proposed that the class part of this be  
10 pushed back a week, and that everybody be able to file papers  
11 and make their requests to be appointed pursuant to 23(g). We  
12 have our proposal of how that should be; others have theirs.

13 But for the moment, I think the most important thing  
14 is to start the MDL process rolling. And for that, we think  
15 that there should be the appointment of lead counsel and  
16 liaison counsel.

17 Lead counsel, at this point it's impossible to see  
18 how it can be other than Mr. Ho on behalf -- who has  
19 represented the critical cases that have gone forward thus  
20 far, MVSC and the Authenticom cases. Those are the cases that  
21 precipitated all this litigation. Nobody would be in this  
22 courtroom without those cases and, particularly, without the  
23 injunction in Authenticom.

24 That's where the documents have gone. I've seen some  
25 of these documents because I'm co-counsel with them. It moves



1 the ball tremendously in these cases. My view, it  
2 substantiates much of what we've alleged; but, obviously,  
3 there will be disagreement on that. But the critical part of  
4 it is that it is already a repository of over a million pages  
5 of documents, that we believe are the heart and soul of what  
6 we are alleging here and form the foundation for everybody  
7 else.

8           So, our proposal is that Mr. Ho be lead counsel for  
9 the MDL; that he be able, as is normally the case with MDL  
10 lead counsel, to assign responsibility for sub-working groups.  
11 If there need to be groups doing particularly discovery on  
12 class issues, if there need to be questions about dealership  
13 structures and dealership agreements, all those can be set up  
14 as subsets from the authority of the leadership of the MDL.

15           And we also propose that Jennifer Gregor be appointed  
16 liaison counsel. Ms. Gregor was the person who was  
17 responsible for the coordination with Judge Peterson's court  
18 as Authenticom was getting ready to go to trial. She  
19 participated heavily in the preliminary injunction hearing,  
20 put on several of the key witnesses, including Brian Maas,  
21 whose declaration you admitted into evidence today, from the  
22 California Dealer Association.

23           We believe that that's a team that has already  
24 performed this function in what has been the only part of this  
25 litigation that has taken shape thus far. It is the engine

1 that drives this entire train. Nobody is here but for the  
2 efforts of these counsel.

3 And, then, we would suggest that this Court have a  
4 hearing at some point, when reasonably feasible, on the  
5 question of the class components. We have views that the  
6 suggestion of the 12 group -- the group of 12 -- if I can call  
7 -- group of 12 versus the group of four for just -- for ease  
8 of reference -- that there be a two-year delay process in this  
9 is just too long. It's too long not just for Authenticom --  
10 which obviously needs, as the Seventh Circuit recognized, to  
11 go to trial more quickly -- but it's too long even for the  
12 dealers, as Mr. Maas -- Mrs. Maas's declaration goes forward.

13 So, we have views -- strong views -- on who should be  
14 the interim co-leads on the class counsel, but we recommend to  
15 the Court that that be handled as a separate -- as a second  
16 proceeding, so that we can get the MDL leadership assigned and  
17 get this case moving forward as expeditiously as possible.

18 THE COURT: I did not understand Ms. Wedgworth and  
19 Mr. Barz to be saying -- correct me if I am wrong -- that they  
20 were here to seek lead class counsel only.

21 MR. BARZ: Correct.

22 THE COURT: I understood you to be --

23 MS. WEDGWORTH: That is correct.

24 THE COURT: -- saying that you are -- you want to  
25 seek as lead counsel in the MDL.

1 MS. WEDGWORTH: Correct.

2 MR. BARZ: Correct.

3 THE COURT: Okay.

4 Then we are going to have to have a procedure to go  
5 about doing that. And I will take your motions on that and,  
6 then, have you come back in short order to address that.

7 Have you talked about -- and just so you know,  
8 whoever is selected as lead counsel and liaison counsel, I am  
9 going to want to see your proposed committees and approve your  
10 proposed committees. It is not -- you were suggesting that if  
11 Mr. Ho is selected, that he get to do all this.

12 MR. ISSACHAROFF: No, no, your Honor.

13 THE COURT: That is not going to work that way.

14 MR. ISSACHAROFF: No, no, I was not suggesting that  
15 the Court --

16 THE COURT: That is how I --

17 MR. ISSACHAROFF: -- create a dictatorship.

18 THE COURT: -- understood you. Yes.

19 MR. ISSACHAROFF: I misspoke. That that be obviously  
20 a recommendation to the Court to facilitate this.

21 But there's a sense, once you have a leadership  
22 structure, of what the organizational form is that best  
23 responds to the needs of this particular case.

24 This is not the typical MDL case. There's not just  
25 an overwhelming number of cases that are --

1 THE COURT: I am not sure there is --

2 MR. ISSACHAROFF: Well, there is no --

3 THE COURT: -- a typical MDL case.

4 MR. ISSACHAROFF: Yes, I realized as soon as I said  
5 that.

6 THE COURT: All of mine have been different.

7 MR. ISSACHAROFF: Yes.

8 But this is not a huge --

9 THE COURT: I understand.

10 MR. ISSACHAROFF: -- number of individual filings.  
11 This is something that is -- really takes some thought as to,  
12 given the experience with the discovery thus far, how best to  
13 organize the case and, also, how to coordinate the class side  
14 of the dealerships with the need of Authenticom to get to  
15 trial as quickly as possible.

16 THE COURT: Have you had discussions among  
17 yourselves -- the plaintiffs' counsel -- about how to proceed  
18 in terms of seeking lead counsel?

19 MR. BARZ: We've had some discussions, your Honor.  
20 We've had a lot of discussions about various, you know,  
21 thoughts people had about leadership. And as of now, we've  
22 got a proposal to come in here and ask for some briefing. I'm  
23 not even sure that we've solidified whether we want just one  
24 brief -- which would be my preference -- or whether you want  
25 to go through the entire process of brief, response and reply.

1 THE COURT: I will not need that much.

2 MR. BARZ: Yeah.

3 THE COURT: But I may want input on --

4 MR. BARZ: So, I think in one brief -- because if you  
5 do two, then everybody tells you how great they are in theirs  
6 and, then, they wait to respond to everybody else's. I think  
7 we can put them both up front because I think we've now seen  
8 where the groups have sorted out.

9 If I could just briefly respond to some of the points  
10 that Mr. Issacharoff made.

11 Your Honor's exactly correct. There's no dispute as  
12 to who should lead the individual actions. That's Kellogg.  
13 Those are their clients. But there is dispute amongst now  
14 three sets of candidates and their various team components as  
15 to who should lead the dealership cases.

16 We believe that it should not be the Kellogg group  
17 and the group they've sort of assembled to represent the  
18 dealer side because of a conflict. And that is, where will  
19 these damages ultimately lie? Will they have lied with the  
20 vendors or were they passed on to the dealers?

21 And you heard Mr. Issacharoff mention, for example,  
22 that Authenticom is in a unique situation where they're  
23 pressing to get to this trial right away. I think he said --  
24 and this is close; I don't expect to be verbatim but -- even  
25 if it would cost us some of the normal discovery.

1 Well, that's not a representation I would make as  
2 class counsel for the dealership group. We want to get all  
3 the discovery we need. We haven't been part of that. We  
4 think the issues are similar but different, as well.

5 And Judge Durkin just dealt with this in what's  
6 called the chicken broiler case, where there was a conflict  
7 amongst, you know --

8 THE COURT: I am aware of what he -- he and I spoke  
9 about that.

10 MR. BARZ: Okay. Great.

11 And originally he said, well, I don't think it will  
12 be that big of an issue, and then a couple months later, he  
13 said, actually, it is, and appointed separate counsel.

14 So, I think the two competing groups on the  
15 dealership side, Ms. Wedgworth and what I'll call my group,  
16 agree that Kellogg and its group should just handle  
17 Authenticom.

18 THE COURT: So, are you proposing --

19 MR. McDONALD: I'm sorry, your Honor, this is Chris  
20 McDonald again --

21 THE COURT: Wait, wait, wait. Please do not  
22 interrupt me. We have got all afternoon. So, I will give you  
23 time to talk.

24 Are you proposing, then, Mr. Barz, that there be two  
25 lead counsel, counsel for Authenticom and then counsel to

1 cover all the dealerships?

2 MR. BARZ: Yes.

3 THE COURT: Okay.

4 MR. BARZ: Yes.

5 And we believe --

6 THE COURT: Ms. Wedgworth, are you in agreement with  
7 that?

8 MS. WEDGWORTH: I'm certainly in agreement with it.

9 I --

10 THE COURT: Two lead counsel, Ms. Wedgworth?

11 MS. WEDGWORTH: Well, lead counsel for Authenticom --

12 THE COURT: Yes.

13 MS. WEDGWORTH: -- as a vendor.

14 THE COURT: Individuals, yes.

15 MS. WEDGWORTH: Yes.

16 THE COURT: And to the extent other vendors come in.  
17 I do not know if they will.

18 MS. WEDGWORTH: It sounds like one is going to be  
19 filed by Mr. Ho anyway. So, it sounds like that makes sense  
20 to have Mr. Ho as -- in charge of -- or your firm, however you  
21 want to say it -- in charge, and then lead counsel for the  
22 other; and, we can coordinate, as we've done so far.

23 MR. KAPLAN: Your Honor, we have this a lot where we  
24 have opt-out actions, individual actions and class actions.  
25 The opt-out actions counsel represent their clients. They

1 have retainer agreements with their clients, just like Mr. Ho  
2 has --

3 THE COURT: This is a little different than opt-out.

4 MS. WEDGWORTH: Yes.

5 THE COURT: I am talking about up front, not opt-out.

6 MS. WEDGWORTH: They're not a class member.

7 MR. KAPLAN: They're not a class member.

8 THE COURT: Right.

9 MS. WEDGWORTH: So, that's not a typical opt-out.

10 MR. KAPLAN: It's a business that brings its own  
11 action, just like Authenticom is represented by their counsel.  
12 The class counsel has no say in that representation. They  
13 represent them.

14 MR. ISSACHAROFF: Your Honor, in most cases, you  
15 don't find that a group copies --

16 THE COURT: Somebody is -- I did not hear you, Mr.  
17 Issacharoff.

18 MR. ISSACHAROFF: You do not find that the complaints  
19 of the dealers virtually track verbatim the complaints of  
20 Authenticom and MVSC.

21 THE COURT: No, I understand.

22 MR. ISSACHAROFF: So --

23 THE COURT: I am just trying to figure out what  
24 you --

25 MR. ISSACHAROFF: Yes.



1           THE COURT: -- are agreement on or if there is  
2 disagreement on that.

3           You wanted to say something, counsel?

4           MR. ROBERTS: Your Honor, if I might.

5           Mike Roberts. I represent Hoover Automotive, a  
6 dealer in this case. And we also will be vying for a  
7 leadership position, along with Labaton -- the Labaton firm --  
8 and their dealership client.

9           We, too, agree that the class of dealers should have  
10 its own set of lead or co-lead counsel and, of course, the  
11 Kellogg firm being the MDL coordinating counsel or MDL lead  
12 counsel, if you will, to help coordinate the common interests  
13 of both the dealers -- the dealer class -- there's common  
14 evidence -- as well as the individual plaintiffs in the case.

15          THE COURT: And are you -- Mr. Roberts and  
16 Ms. Wedgworth and Mr. Barz, are you in agreement as to  
17 Ms. Gregor serving as liaison counsel --

18          MR. BARZ: No.

19          MS. WEDGWORTH: No, your Honor.

20          THE COURT: -- or are you going to propose something?  
21 Okay.

22          MS. WEDGWORTH: And, in fact, I'm not sure a liaison  
23 counsel is needed if we can coordinate, which we've done  
24 before. At least this way we've --

25          MR. ROBERTS: Your Honor --

1 MS. WEDGWORTH: -- coordinated.

2 MR. ROBERTS: Sorry.

3 THE COURT: It is often helpful to the Court --

4 MR. BARZ: Your Honor, our proposal --

5 THE COURT: -- to have liaison --

6 Mr. Barz, you know better than that.

7 MR. BARZ: When you're ready.

8 THE COURT: You have been in here enough.

9 It is often better for the Court to have a liaison  
10 counsel, but we will see.

11 Yes, Mr. Roberts?

12 MR. ROBERTS: Your Honor, if I may.

13 To answer your original question, some -- have we --

14 THE COURT: Which one?

15 (Laughter.)

16 MR. ROBERTS: That is, have we tried to confer  
17 together to try to come up with some consensus or civility  
18 with regard to working with each other as a structure for the  
19 dealer class.

20 I can tell you that I have, and I know that others  
21 have. We are trying to work together. I had dinner with  
22 Mr. Kaplan and Mr. Cuneo last night. There was no  
23 breakthrough, but we are still trying, your Honor.

24 MR. BARZ: Your Honor, if I may.

25 I might be part of the reason there's no breakthrough

1 on this. It's just we've tried to put together a group that  
2 we believe accomplishes the goals of the Manual for Complex  
3 Litigation. One of those goals is to make sure you have a  
4 team that has the resources and the talent to do the best for  
5 the class but isn't so big. So, unfortunately, we're not  
6 going to be able to make everybody happy by including 15 firms  
7 in our proposed leadership.

8           We've tried to be as lean as we can. We've got three  
9 co-leads -- myself, Mr. Kaplan, Mr. Cuneo -- with a chair of  
10 that lead, which would be myself. So, the defendants and the  
11 Court have one-stop shopping to get answers. If anything's  
12 been proven over this last couple weeks, as you saw by our  
13 filing that came in -- I think Ms. Miller was stuck filing  
14 about six minutes after midnight -- there's just too many  
15 cooks in the kitchen. So, we want one-stop shopping.

16           THE COURT: I noticed it did not come in on time.

17           MR. BARZ: It's wasn't her fault at all.

18           THE COURT: I know it is not Ms. Miller's fault.

19           MR. BARZ: The coordination of all the different  
20 competing groups -- which will eventually be resolved -- we  
21 think it's important to have a liaison. We have Mr. Clifford,  
22 as well, with liaison. And we have just two folks on our  
23 executive committee. And we think that's the right team.  
24 It's lean, but it's also got everything that it needs.

25           And it doesn't have the conflicts that, I think, some

1 of the groups that are aligned with Kellogg, that are  
2 representing the dealers but are aligning themselves with  
3 these notions that we're prepared to streamline discovery even  
4 if it costs us. We don't think that's something the dealers  
5 can take on.

6 THE COURT: So, I would like submissions from each  
7 group, individual -- whoever -- who wants to propose being  
8 lead counsel, addressing what structure you would propose, why  
9 you think you should be lead counsel. I certainly want your  
10 résumés and any other either MDL or complex experience you  
11 have had, including the judges who you have appeared before.

12 I want to give you a little bit of reasonable time.  
13 I know this needs to get resolved quickly; and, if you have  
14 done your due diligence, you know I will not sit on things.  
15 But I also want to give you time to see if there are any  
16 pieces of it that you can work out.

17 So, Mr. Roberts, I will start with you. What do you  
18 think is reasonable in terms of filing submissions before the  
19 Court to consider for lead counsel?

20 MR. ROBERTS: Your Honor, thank you very much.

21 In my opinion, I think that if you gave us two or  
22 three weeks to work through this, I think that that's  
23 reasonable enough time. I think filing a proposal or -- with  
24 this amount of people, it's been very, very difficult to get  
25 people to even go have a cup of coffee or to get on the phone

1 with each other. And I think that even John Cuneo would agree  
2 with that. I mean, he's talked to me about it's difficult to  
3 reach people. And, so -- not to put blame on anyone.

4 But I believe that if we had, say, two weeks to make  
5 a proposal, that would give us the chance to talk to each  
6 other and see if we could come to a consensus to present to  
7 the Court.

8 THE COURT: So, if I give you until March 26th, does  
9 that work?

10 MR. BARZ: It's fine, your Honor.

11 MS. WEDGWORTH: That's acceptable, your Honor.

12 THE COURT: Okay.

13 MR. HO: That's fine, your Honor.

14 THE COURT: And I do look to the guideposts in the  
15 Manual for Complex Litigation. And it is very important for  
16 me to have somebody who not just has the experience, but can  
17 work well with others. That is important to me. So, whatever  
18 examples you give, I will take, and --

19 MS. MILLER: Your Honor --

20 THE COURT: -- talk to other judges who you have  
21 worked with, as well.

22 Yes --

23 MS. MILLER: Sorry.

24 THE COURT: -- Ms. Miller?

25 MS. MILLER: We're not going to get in the middle of

1 this.

2 THE COURT: I noticed you moving over as they were  
3 talking.

4 MS. MILLER: Yeah.

5 (Laughter.)

6 MS. MILLER: I only wanted to raise one issue because  
7 it was mentioned earlier by Authenticom's counsel. I know  
8 your Honor granted their motion for leave to file Mr. Maas's  
9 declaration. We obviously didn't get a chance to respond to  
10 that. We may have something to file to give your Honor some  
11 context.

12 THE COURT: And I read the Seventh Circuit opinion,  
13 which, I think, gives me a chunk of context. And I took that  
14 for purposes of today to the extent it was anything I needed  
15 to consider.

16 MS. MILLER: Fair enough.

17 THE COURT: I do not know --

18 MS. WEDGWORTH: And, your Honor --

19 THE COURT: I think I probably have enough for  
20 context, but --

21 MS. WEDGWORTH: On that point --

22 THE COURT: -- if you feel the need to, you can. But  
23 I do not think you need to.

24 MS. WEDGWORTH: We actually were contemplating  
25 responding, as well, perhaps --

1           THE COURT: There is no need to. I understand where  
2 you may be coming from. I granted the motion and took it for  
3 purposes of today for this status and setting the tone and  
4 talking about any kind of discovery deadlines.

5           So, March 26th, by 5:00 o'clock -- since you seem to  
6 like 12:05, the next day.

7           MR. KAPLAN: 5:00 o'clock Central Time.

8           THE COURT: March 26th, Central Time, by 5:00  
9 o'clock, please file any motions, anybody who is seeking a  
10 lead counsel position, along with the indications that I gave  
11 you. And I would also like you to, please, drop off courtesy  
12 copies of them.

13           Then I am going to have you come back the following  
14 week.

15           MR. ROBERTS: Is that April 2nd, your Honor?

16           THE COURT: No, no, it will not be that soon. We  
17 have got to find a chunk of time.

18           The morning of April 6th -- Friday, April 6th -- at  
19 10:00 a.m. And anybody who is seeking to be lead counsel  
20 should be present because I may have questions for you, and we  
21 can talk about the issues further.

22           As to discovery -- and I know there are disputing  
23 issues here and different interests -- I do want you to go  
24 ahead and issue in the Authenticom case -- and I appreciate  
25 you want to be on the same schedule, but at least I want to

1 get some things moving on there that have not been.

2 I am going to lift the stay. I am going to keep a  
3 stay on oral discovery until further order of the Court and I  
4 get a better sense of what still needs to be done and if there  
5 is any way to bifurcate or segregate the Authenticom from the  
6 other cases. I am not sure there is, but there certainly may  
7 be a way on some witnesses to do that.

8 Any interrogatories that you want to issue or any  
9 other document requests, to the extent you have not issued  
10 those, should be issued by March 23rd.

11 MR. KAPLAN: And that is just in the Authenticom  
12 case?

13 THE COURT: Just in the Authenticom case for now,  
14 because that is the one -- I am not hearing anybody else  
15 telling me the same things that Authenticom is telling me, and  
16 they already have some discovery underway.

17 When you come back here on April 6th, one of the  
18 other things I would like you to do is to have some additional  
19 discussions among yourselves about a discovery structure, now  
20 that you can focus just on that, and see if you can reach any  
21 agreement or have any creative proposal that might address the  
22 Authenticom concerns, as well as yours. Because I know the  
23 defendants do not want to have to do this twice, and that is  
24 not efficient at all. I am aware of that. But is there any  
25 way that you can come up with to balance both of your needs?



1           So, you have your dates going forward. Again, March  
2 26th by 5:00 o'clock Central Time. Please drop off courtesy  
3 copies.

4           And, then, is there anything else this afternoon that  
5 we have to take up?

6           Yes?

7           MR. HEDLUND: Good afternoon, your Honor, Dan  
8 Hedlund. I introduced myself earlier. We filed the case on  
9 March 8th for --

10          THE COURT: Yes.

11          MR. HEDLUND: Waconia Dodge.

12          So, it's a class dealership case. I've worked with  
13 many of the counsel involved in the dealership cases and will  
14 certainly engage in discussions with them about leadership,  
15 but I just wanted to indicate that it's possible we could also  
16 file something.

17          THE COURT: Okay.

18          And nobody is precluded from filing. If you did not  
19 speak up today, I will not hold that against you. But if you  
20 do want to, you need to file something by the 26th.

21          MR. HEDLUND: Thank you.

22          MR. BARZ: Do you want to set a page limit for those?  
23 15?

24          THE COURT: No, I do not. If you give me a hundred  
25 pages, I am not going to be happy.

1 (Laughter.)

2 MR. KAPLAN: You wouldn't read it.

3 THE COURT: I like efficiency. So, if you give me a  
4 hundred pages, that is going to tell me something about how  
5 efficient you are.

6 MS. MILLER: Your Honor, there's only one other  
7 issue, and it only affects a couple of parties; but, that's  
8 the motion to dismiss in the Cox individual action. We have  
9 submitted a proposed briefing schedule for that because it's  
10 just between the individual Cox plaintiff and CDK.

11 THE COURT: And I will -- what was your proposed  
12 briefing schedule for that?

13 MS. MILLER: I had it and now I don't. Give me a  
14 second.

15 (Brief pause.)

16 MS. MILLER: It's on Page 4 of the status report.

17 Subject to approval by the Court, of course, we would  
18 file our motion to dismiss by March 16th; Cox to file its  
19 response by April 16th --

20 THE COURT: Oh, yes.

21 MS. MILLER: -- and our reply by April 30th.

22 THE COURT: That is fine. I will put that in place  
23 as to Cox Automotive.

24 And that only impacts your client, correct --

25 MS. MILLER: Correct.

1 THE COURT: -- Ms. Miller?

2 That does not impact --

3 MS. MILLER: Correct.

4 THE COURT: -- Reynolds?

5 MS. GULLEY: That's right.

6 THE COURT: Okay.

7 So, that is fine. March 16th, April 16th, and April  
8 30th.

9 Again, please drop off courtesy copies for me. It is  
10 easier. And you will get the other motions on file and drop  
11 off courtesy copies.

12 MS. MILLER: We will file everything just as a refile  
13 so you don't have to get multiple filings from different  
14 people.

15 THE COURT: Okay.

16 MS. MILLER: We'll just file everything for you and  
17 bring over one set.

18 THE COURT: Thank you.

19 MS. MILLER: Yep.

20 THE COURT: That would be helpful.

21 MR. HO: Your Honor, just one question for clarity.  
22 Was it your Honor's decision that there would be no responses  
23 to the leadership applications?

24 THE COURT: Not unless I ask for them.

25 MR. HO: Thank you.

1 MS. WEDGWORTH: And, then, as to the confidentiality  
2 order -- protective order -- and ESI, do you anticipate any  
3 additional briefing or information needed after March 30th if  
4 there is a dispute?

5 THE COURT: I am very hopeful that you are going to  
6 give me an agreed one.

7 MS. WEDGWORTH: Working on it.

8 THE COURT: So, at the moment, I do not anticipate  
9 anything because I am hopeful that it would be agreed. But if  
10 not, you will get further direction from me.

11 MS. WEDGWORTH: Thank you, your Honor.

12 MR. ISSACHAROFF: Your Honor, I apologize, I will not  
13 be here April 6th. I teach at that time. I can't. But I am  
14 working with Mr. Ho's group.

15 THE COURT: Okay. There are enough of you.  
16 Do you teach that morning?

17 MR. ISSACHAROFF: Yes.

18 THE COURT: I was going to give you the call-in  
19 option, but if you teach that morning, that will not work.

20 MR. ISSACHAROFF: 10:00 to 12:00. I've got a hundred  
21 students. I'm sorry, your Honor.

22 THE COURT: That is okay. I understand.

23 Is there anything else for the Court this afternoon?  
24 Yes?

25 MS. ROMANENKO: Yes, your Honor, one more issue.

1           THE COURT: Can you just move a little closer to the  
2 microphone, please --

3           MS. ROMANENKO: Sure.

4           THE COURT: -- so I can hear you.

5           MS. ROMANENKO: Sure.

6           Victoria Romanenko again from Cuneo, Gilbert &  
7 LaDuca.

8           So, with respect to a stay of discovery during the  
9 pendency of motion-to-dismiss briefing in the dealership  
10 actions, we understand that maybe oral discovery will not go  
11 forward, but we're hopeful that other discovery can go  
12 forward. Your Honor's rules say that the parties are reminded  
13 that the pendency of a motion, such as a motion to dismiss,  
14 does not stay discovery. So, we just wanted to clarify that  
15 issue.

16           MS. MILLER: If we could briefly -- your Honor, as  
17 the Seventh Circuit opinion and other opinions have given  
18 indication, we think some of the issues may be dropped out by  
19 some of the motions. We're hopeful. We'll await your Honor's  
20 decision on those. But we think that waiting on the motions  
21 to dismiss -- and your Honor is usually quite expeditious in  
22 issuing such orders -- that, you know, we should wait until  
23 those motions are decided because that may narrow the scope of  
24 discovery.

25           THE COURT: I am going to take that back up on the

1 6th.

2 MS. MILLER: Okay.

3 THE COURT: That is one of the things that I have  
4 asked you to talk about. And maybe you will agree to turn  
5 over the documents you have given to the government  
6 investigators or maybe there is some subset.

7 But before I put anything firm in place, I want to  
8 see what I get -- what the protective order looks like, what  
9 the lead counsel applications look like -- and, then,  
10 hopefully you will be able to reach some agreement on it.

11 Yes?

12 MS. GULLEY: Just going back for a second to the  
13 issue of the Authenticom discovery -- written discovery --  
14 that should be issued by March 23rd, just --

15 THE COURT: If it has not been already.

16 MS. GULLEY: Well, I just mentioned earlier that  
17 Reynolds has not filed their counterclaim -- its counterclaims  
18 -- yet; and, therefore, there's obviously -- I mean, you're  
19 not suggesting that the not-yet-filed counterclaims discovery  
20 needs to be served by --

21 THE COURT: No. If it is not on file yet, no. But I  
22 will get to the motion to dismiss, so that we can figure out  
23 where that is going.

24 MS. GULLEY: Great. Thank you.

25 MR. KAPLAN: Thank you, your Honor.

1 THE COURT: Any other issues?

2 (No response.)

3 THE COURT: Anybody in the audience want to say  
4 anything?

5 (No response.)

6 THE COURT: Okay.

7 I will see you April 6th. Thank you.

8 \* \* \* \* \*

9

10 I certify that the foregoing is a correct transcript from the  
11 record of proceedings in the above-entitled matter.

12 /s/ Joseph Rickhoff  
13 Official Court Reporter

March 14, 2018

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# **Exhibit 3**



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June 5, 2018

**BY E-MAIL**

Michael N. Nemelka  
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Peggy J. Wedgworth  
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One Pennsylvania Plaza  
New York, NY 10119

Re: *In re Dealer Management Systems Antitrust Litig.*,  
MDL No. 2817, Case No. 18-CV-864 (N.D. Ill.)

Dear Mike and Peggy:

I write regarding the CDK-specific issues raised in Plaintiffs' May 25 and May 31 letters.<sup>1</sup>

**Plaintiffs' May 25, 2018 Letter:**

*Interrogatories:* We appreciate your agreement to supplement Authenticom's responses to CDK Interrogatory Nos. 4, 5, 9, 10, 11, 13, 14, 15, and 21. We note, however, that you did not provide a date by which you would supplement. We ask that you identify a date certain by which Authenticom will supplement no later than COB Friday, June 8.

With respect to Interrogatory No. 25, while courts have disagreed on the issue, the Northern District of Illinois has held that an interrogatory asking a party "to explain the factual and legal basis of any denial of a request to admit" constitutes a single interrogatory for purposes of the cap. *Scandaglia v. Transunion Interactive, Inc.*, 2010 WL 317518, at \*5 (N.D. Ill. Jan. 21, 2010). There the court squarely rejected the opposing party's claim—indistinguishable from Plaintiffs' here—that the interrogatory was "compound" and "would exceed the allowable number of interrogatories." *Id.* "Having denied so many . . . Requests to Admit," the court explained, the objecting party "placed these issues in dispute." *Id.* The party who propounded the interrogatory was "entitled to discovery regarding the basis for [the other side's] denials, and conducting this discovery through interrogatory rather than through deposition" was "less costly

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<sup>1</sup> Plaintiffs' sent two letters on May 31, 2018. One in response to CDK's January 29, 2018 Letter, and the other purporting to memorialize certain aspects of the parties May 18, 21, and 22 meet-and-confers. Per my letter of June 1, 2018, this letter is intended to address the latter May 31 letter.

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Peggy J. Wedgworth  
June 5, 2018  
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and time consuming for all parties involved.” *Id.* This holding and rationale apply equally here. Please let us know if Authenticom will withdraw its objection and respond to this Interrogatory.

*RFAs:* We appreciate your agreement to amend Authenticom’s responses to CDK RFA Nos. 3, 4, and 8. Here, again, we note that you did not provide a date by which you would amend. We ask that you identify a date certain by which Authenticom will amend no later than COB Friday, June 8.

*RFPs:* We appreciate your May 31, 2018 response. We will follow-up, as appropriate, on the issues discussed on today’s meet-and-confer.

**Plaintiffs’ May 31, 2018 Letter:**

**I. FTC Productions**

A. *AutoMate Documents:* As we have thoroughly documented through our meet-and-confer correspondence, we disagree with your repeated argument regarding the relevance of *all* of the documents CDK produced to the FTC in connection with the AutoMate transaction—based solely on the fact that they were produced to the FTC in regards to that transaction—and, as clearly stated in my May 24 letter (and during our May 22 meet-and-confer), the parties are at impasse. Your May 31 letter confirms as much. As this issue has festered for some time and given the discovery deadlines currently in place, we will shortly be seeking clarification from the Court on this issue. And while the logistics of how CDK proposes to determine what of the AutoMate production it will produce in the civil litigation is irrelevant to the core issue in dispute, the answer is simple: CDK intends to run the full set of agreed-upon search terms against the document collections of all of the agreed-upon (or court-ordered) custodians and review the resulting documents for responsiveness to Plaintiffs’ document requests (as limited by any party agreements or Court orders). In other words, CDK intends to treat the AutoMate collection the same as it will treat non-AutoMate/non-CID documents—*i.e.*, limited to agreed-upon (or court-ordered) custodians and search terms.

B. *Recordings of FTC Interviews.* Like Plaintiffs and Reynolds, CDK will agree to produce any transcripts, recordings, or other memorializations of FTC interviews in connection with the agency’s joint conduct investigation. As previously noted, however, we are unaware of any interviews and thus unaware of any such documents.

C. *Search Terms.* As previously reported, the bulk of CDK’s production to the FTC in connection with the joint conduct investigation was done using TAR and not search terms. We have confirmed that search terms were used in connection with certain non-TAR documents. CDK will produce those search terms.

D. *Footnote 1 of my May 24 Letter:* Plaintiffs are over-reading the footnote in question and the rant in your letter does not warrant a response. CDK will respond to

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Peggy J. Wedgworth  
June 5, 2018  
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discovery requests properly served upon it and produce documents in accordance with any agreements reached and any orders of the Court.

## **II. Custodial and Non-Custodial Documents**

A. *Custodial*. As this section of your letter is largely directed at Reynolds, we will allow its counsel to speak on its behalf. As to CDK, I will repeat, again, that CDK has already begun its review of custodial documents (and, again, has already produced approximately 42,000 custodial records). So Plaintiffs aspersions of misconduct (appearing in some off-hand parentheticals in your letter) on the part of CDK are misplaced.

B. *Non-Custodial*. We already addressed this in our May 24 letter and have nothing more to add.

## **III. Reynolds' Preservation of Documents.**

As this issue is not directed at CDK, no response is required of it.

## **IV. CDK's Responses to Authenticom's RFPs**

Your attempts to recast the parties' meet-and-confer discussion on this topic notwithstanding, CDK offers the following as to the outstanding RFPs.

1. *RFP 102*: Per my May 24 letter, we have confirmed that the databases we identified contain the material information regarding invoiced amounts to vendors for the period 2011-2017 to the extent data exists. In that letter, CDK also agreed to consider any parameters Authenticom might propose with respect to a "representative sample" of the actual invoices sent to vendors. Your letter proposes a full set of invoices for 40 vendor customers each of DMI, IntegraLink, and 3PA—a total of 120 customers—for a 7+ year period. That is not a "representative" sample and CDK is not inclined to undertake the burdensome task of putting together the requested collection, particularly given CDK's substantial data production on this topic. If Authenticom is willing to consider a substantially smaller, truly "representative" sample, CDK remains willing to consider it.
2. *RFP 103*: Here again, we have confirmed that the databases we identified contain the material information regarding invoiced amounts to dealers for the period 2011-2017 to the extent data exists. But, here again, your letter does not propose a "representative" sample of dealer invoices, but instead suggests a full set of such invoices for 100 dealers for a 7+ year period. That is not a "representative" sample and CDK is not inclined to undertake the burdensome task of putting together the requested collection, particularly given CDK's substantial data production on this topic. If Authenticom is willing to consider a substantially smaller, truly "representative" sample, CDK remains willing to consider it.

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Page 4

3. *RFP 105*: Given the tenuous relevance argument Plaintiffs have advanced in connection with this Request, CDK is not inclined to undertake the substantial burden required to assemble the requested information. CDK has undergone at least three significant corporate reorganizations over the last 3+ years, starting with its spin-off from ADP in 2014, and a number of smaller, departmental reorganizations. Attempting to track down whether a given position was eliminated or simply renamed, whether it was “off-shored” or moved to accommodate a specific candidate, would require CDK to attempt to piece together information from hundreds (and potentially thousands) of HR records, with no guarantee that it would ultimately be able to successfully determine the answer as to any given title or position. To the extent Authenticom can conceive of a more targeted way by which CDK could satisfy this Request, we remain willing to consider it.
4. *RFP 106*: *See supra* the discussion of the AutoMate FTC production.

As to the remainder of the RFPs enumerated in your letter, CDK will produce documents in accordance with the parties’ agreements as to each, as memorialized in my May 24, 2018 letter.

**V. Reynolds’ Responses to Authenticom’s RFPs**

As this issue is not directed at CDK, no response is required of it.

**VI. Defendants’ “Deficient” Responses to Authenticom’s First Set of Interrogatories**

We appreciate your May 31, 2018 response. We will follow-up, as appropriate, on the issues discussed on today’s meet-and-confer with respect to CDK.

Sincerely,



Britt M. Miller

cc: Reynolds Counsel of Record  
Mark Ryan  
Andrew Marovitz  
Matt Provance

# **Exhibit 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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IN RE: DEALER MANAGEMENT	)	MDL No. 2817
SYSTEMS ANTITRUST LITIGATION	)	Case No. 18 C 864

This Document Relates to All Cases

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**AUTHENTICOM'S SECOND SET OF REQUESTS FOR THE PRODUCTION  
OF DOCUMENTS FOR DEFENDANT CDK GLOBAL, LLC**

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Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Authenticom, Inc. ("Authenticom") hereby requests that Defendant CDK Global, LLC ("CDK") produce all documents in its actual or constructive possession, custody, or control related directly or indirectly to any of the matters described below. All documents and tangible things responsive hereto should be produced for inspection as soon as practicable and in no event later than thirty (30) days from the date after service of these requests for production. Production shall be made at the offices of KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C., 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, or as otherwise agreed to by the parties.

## **DEFINITIONS**

For purposes of these requests the following definitions shall apply:

1. “Add-on application” means a software application that dealers use in addition to or separate from their Dealer Management System (“DMS”) software in the course of operating their dealerships.
2. “All” shall be construed as all and any, and the term “any” shall be construed as all and any.
3. “Authenticom” shall mean the Plaintiff in this action and a provider of data integration services in the automotive industry based in La Crosse, Wisconsin. “Authenticom” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.
4. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the document request all responses that might otherwise be construed to be outside of its scope.
5. “CDK” shall mean CDK Global, LLC, as described in Paragraph 4 of Defendants’ Combined Statement of Additional Facts Requiring Denial of Preliminary Injunctive Relief (hereinafter, “SoAF”), Dkt. No. 87 (June 16, 2017). “CDK” shall include the dealer services business of Automatic Data Processing, Inc. (“ADP”) prior to September 30, 2014, as described in Paragraph 5 of the SoAF. “CDK” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.
6. “Communication” shall mean any exchange or transfer of information, whether electronic, written, oral, or in any other form. The phrase “communication between” is defined

to include instances where one party addresses the other party but the other party does not necessarily respond.

7. “Data integrators” shall refer to service providers that provide access by any means to dealer data on the DMS database, whether by extracting the data, writing data back into the DMS, or both. For the avoidance of doubt, “data integrators” includes CDK (through its 3PA program) and Reynolds (through its RCI program).

8. “DMI” shall mean Digital Motorworks, Inc., as described in Paragraph 215 of the SoAF. “DMI” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

9. “Document” and “Documents” are used in the broadest extent permitted by Federal Rule of Civil Procedure 34(a).

10. “IntegraLink” shall mean IntegraLink, as described in Paragraph 215 of the SoAF. “IntegraLink” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

11. “Including” (in addition to its usual meanings) shall mean including but not limited to.

12. The terms “relating to,” “related to,” “referring to,” “regarding,” or “with respect to” shall mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.



13. “Reynolds” shall mean “The Reynolds & Reynolds Company,” as described in Paragraphs 1-3 of the SoAF. “Reynolds” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

14. “Vendors” or “application providers” shall mean vendors who provide software applications that perform operations functions for dealerships, as described in Paragraph 20 of the SoAF.

15. “You,” “Your,” or “Your company” shall mean the responding Defendant, its present or former predecessors, subsidiaries, departments, divisions, joint ventures, and affiliates, including without limitation, any organization or entity that the responding Defendant manages or controls, together with all present and former directors, officers, employees, agents, representatives, or any persons acting or purporting to act on behalf of the responding Defendant.

### **INSTRUCTIONS**

1. In producing documents and other materials, You must furnish all documents in Your possession, custody, or control, regardless of whether such documents or materials are possessed directly by You, Your employees or former employees, agents or former agents, parents, subsidiaries, affiliates, investigators, or by Your attorneys or their employees, agents, vendors, or investigators.

2. All documents shall be produced in the same order as they are kept or maintained by You in the ordinary course of Your business. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained.

3. Documents attached to one another should not be separated. If any portion of any document is responsive to any portion of the document requests below, then the entire document must be produced.

4. Documents shall be produced in such fashion as to identify the natural person in whose possession they were found (i.e., the document custodian).

5. If any document responsive to any of these requests is privileged, and the document or any portion of the document requested is withheld based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support of that claim, including the following information:

- a. the exact basis for withholding the document;
- b. the date of such communication;
- c. the medium of such communication;
- d. the general subject matter of such communication (such description shall not be considered a waiver of Your claimed privilege);
- e. the identity of any document that was the subject of such communication and the present location of any such document;
- f. the identity of all persons involved in such communication; and
- g. the identity of any document which records, refers, or relates to such communication and the present location of any such document.

6. Each document requested herein should be produced in its entirety and without deletion, redaction, or excision, except as permitted by a recognized privilege, regardless of whether You consider the entire document or only part of it to be relevant or responsive to these document requests. If You have redacted any portion of a document on the ground of privilege, stamp the word "REDACTED" beside the redacted information on each page of the document You have redacted.

7. Each request for documents seeks production of all documents described along with any attachments, drafts, and non-identical copies in any language whatsoever, in the possession, custody, or control of You or Your respective agents or attorneys. You are

specifically instructed to review any storage and archive facilities and the personal files, records, notes, correspondence, daily calendars, telephone logs, and records of all persons who would likely have responsive documents.

**REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST NO. 93.** Communications and documents relating to how much CDK spends on a monthly basis with independent data integrators, including with Authenticom, SIS, and/or others, from January 1, 2013 to present. *See* CDK-0053241.

**REQUEST NO. 94.** Communications and documents in which Dan McCray used any term of profanity. This request has no date limitation.

**REQUEST NO. 95.** Communications and documents concerning DMI's syndication or "comingling" of Reynolds' data following the February 18, 2015 Data Exchange Agreement, including but not limited to internal communications and documents concerning any competitive advantage DMI gained through the ability to syndicate or "comingle" Reynolds' data and communications with third parties concerning DMI's ability to syndicate or "comingle" Reynolds' data.

**REQUEST NO. 96.** Communications and documents concerning the potential or expressed inability of vendors to afford the up front, minimum, and/or monthly fees CDK charges through the 3PA program, including but not limited to any communications with third party vendors in which the third party indicated it could not afford CDK's 3PA up front, minimum, and/or monthly fees.

**REQUEST NO. 97.** Communications and documents concerning any vendor reducing the services obtained through the 3PA program in connection with (or as a result of) any price increases for those services.

**REQUEST NO. 98.** Communications and documents regarding whether CDK should or would pass through, or has passed through, RCI data integration fees to dealership customers of CDK add-on applications.

**REQUEST NO. 99.** Communications and documents concerning the limitations of manual extraction of dealer data, including but not limited to communications and documents concerning Reynolds' Dynamic Reporting program.

**REQUEST NO. 100.** Communications and documents concerning any instance in which a CDK, DMI, and/or Integralink employee, agent, or independent contractor sent a dealership user-id and/or password in an unencrypted format through email.

**REQUEST NO. 101.** Documents sufficient to show the identity of any vendor and/or dealer that used DMI and/or Integralink for data integration services on the Reynolds DMS during the "wind down period," as described in the February 18, 2015 Data Exchange Agreement. For each such vendor and/or dealer, please produce documents sufficient to show the date (if any) on which each vendor and/or dealer exited the "wind down period" and no longer used DMI and/or Integralink for data integration services on the Reynolds DMS.

**REQUEST NO. 102.** For the avoidance of doubt, all invoices for all vendors that used (1) DMI, (2) Integralink, and/or (3) the 3PA program for data integration services, from 2011 to the present.

**REQUEST NO. 103.** For the avoidance of doubt, all invoices for all dealerships that used a CDK DMS, from 2011 to the present.

**REQUEST NO. 104.** All communications and documents concerning your security tools, processes, and training for your software developers.

**REQUEST NO. 105.** Documents sufficient to show the jobs CDK eliminated and/or moved offshore from 2015 to the present, including documents sufficient to show the extent of the jobs eliminated and/or moved offshore, the dates on which the jobs were eliminated and/or moved offshore, and the categories or types of jobs that were eliminated and/or moved offshore. *See, e.g.,* CDK-1181024.

**REQUEST NO. 106.** An unredacted version of the FTC's March 18, 2018 Complaint concerning CDK's proposed acquisition of Auto/Mate (Docket No. 9382), as well as, for the avoidance of doubt, all documents provided to the FTC in connection with the FTC's review of the Auto/Mate acquisition.

**REQUEST NO. 107.** Communications and documents not previously produced to Authenticom which contain any of the following terms:

- "Vendor X"
- "Joint team"
- "Combined team"
- "No disruption" /50 "security level"
- "Iron dome"
- "Secure DMS Strategy"
- "Lock out\*"
- "Security Advisory Council"
- "Project Scarlett"
- "Project Ledson"
- Unhook & Rey! or RR or R&R
- "Data breach" & OneEighty or "One Eighty"
- "Evil empire"
- "DDX mass activation"
- Trust\* /50 Rey! or RR or R&R or Schaefer or Brockman
- Threat\* /50 Rey! or RR or R&R
- Exorbitant /50 Rey! or RR or R&R
- DMI & "one stop shop"
- Leak or leakage /50 Authen! or SIS
- Drain\* /s swamp

Dated: March 23, 2018

Respectfully submitted,

/s/ Michael N. Nemelka

Michael N. Nemelka (*pro hac vice*)

Aaron M. Panner (*pro hac vice*)

David L. Schwarz (*pro hac vice*)

Kevin J. Miller (*pro hac vice*)

Derek T. Ho (*pro hac vice*)

Joshua Hafenbrack (*pro hac vice*)

Joanna T. Zhang (*pro hac vice*)

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*Attorneys for Plaintiff Authenticom, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2018, I caused a true and correct copy of the foregoing Authenticom, Inc.'s Second Set of Requests for the Production of Documents for Defendant CDK Global, LLC to be served by email upon the following individuals:

Mark W. Ryan (mryan@mayerbrown.com)  
Britt M. Miller (bmiller@mayerbrown.com)  
Matthew D. Provance (mprovance@mayerbrown.com)  
Jeffrey A. Simmons (jsimmons@foley.com)  
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Kathleen A. Stetsko (kstetsko@perkinscoie.com)

/s/ Michael N. Nemelka  
Michael N. Nemelka

# **Exhibit 5**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

---

IN RE: DEALER MANAGEMENT  
SYSTEMS ANTITRUST LITIGATION

MDL No. 2817  
Case No. 18 C 864

This Document Relates to All Cases

Hon. Amy J. St. Eve

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**INDIVIDUAL PLAINTIFFS' FIRST SET OF REQUESTS FOR THE PRODUCTION  
OF DOCUMENTS FOR DEFENDANT CDK GLOBAL, LLC**

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Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs Motor Vehicle Software Corporation, Authenticom, Inc., Cox Automotive, Inc., Autotrader.com, Inc., Dealer Dot Com, Inc., Dealertrack, Inc., HomeNet, Inc., Kelley Blue Book Co., Inc., vAuto, Inc., VinSolutions, Inc., Xtime, and Loop, LLC ("Individual Plaintiffs") hereby request that Defendant CDK Global, LLC ("CDK") produce all documents in its actual or constructive possession, custody, or control related directly or indirectly to any of the matters described below. All documents and tangible things responsive hereto should be produced for inspection as soon as practicable and in no event later than the date provided for in the Case Management Order. Production shall be made at the offices of KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C., 1615 M Street, N.W., Suite 400, Washington, D.C. 20036, or as otherwise agreed to by the parties.

## **DEFINITIONS**

For purposes of these requests the following definitions shall apply:

1. “Add-on application” means a software application that dealers use in addition to or separate from their Dealer Management System (“DMS”) software in the course of operating their dealerships.

2. “All” shall be construed as all and any, and the term “any” shall be construed as all and any.

3. “Authenticom” shall mean a Plaintiff in this MDL and a provider of data integration services in the automotive industry based in La Crosse, Wisconsin. “Authenticom” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

4. “AutoLoop” shall mean Loop, LLC and its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

5. “Cox Automotive” shall mean Cox Automotive, Inc., Autotrader.com, Inc., Dealer Dot Com, Inc., Dealertrack, Inc., HomeNet, Inc., Kelley Blue Book Co., Inc., vAuto, Inc., VinSolutions, Inc., and Xtime, Inc. (collectively, “Cox Automotive”) and their present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

6. “MVSC” shall mean Motor Vehicle Software Corporation and its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

7. “RTS” shall mean Dealertrack’s Registration and Titling Service and its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

8. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the document request all responses that might otherwise be construed to be outside of its scope.

9. “CDK” shall mean CDK Global, LLC, as described in Paragraph 4 of Defendants’ Combined Statement of Additional Facts Requiring Denial of Preliminary Injunctive Relief (hereinafter, “SoAF”), *Authenticom* Dkt. No. 87 (June 16, 2017). “CDK” shall include the dealer services business of Automatic Data Processing, Inc. (“ADP”) prior to September 30, 2014, as described in Paragraph 5 of the SoAF. “CDK” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

10. “Communication” or “Communications” shall mean any exchange or transfer of information, whether electronic, written, oral, or in any other form. The phrase “communication between” is defined to include instances where one party addresses the other party but the other party does not necessarily respond.

11. “CVR” shall mean Computerized Vehicle Registration and its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

12. “Data integrators” shall refer to service providers that provide access by any means to dealer data on the DMS database, whether by extracting the data, writing data back into

the DMS, or both. For the avoidance of doubt, “data integrators” includes CDK (through its 3PA program) and Reynolds (through its RCI program).

13. “DMI” shall mean Digital Motorworks, Inc., as described in Paragraph 215 of the SoAF. “DMI” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

14. “Document” and “Documents” are used in the broadest extent permitted by Federal Rule of Civil Procedure 34(a).

15. “IntegraLink” shall mean IntegraLink, as described in Paragraph 215 of the SoAF. “IntegraLink” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

16. “Including” (in addition to its usual meanings) shall mean including but not limited to.

17. The terms “relating to,” “related to,” “referring to,” “regarding,” or “with respect to” shall mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

18. “Reynolds” shall mean “The Reynolds & Reynolds Company,” as described in Paragraphs 1-3 of the SoAF. “Reynolds” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

19. “Vendors” or “application providers” shall mean vendors who provide software applications that perform operations functions for dealerships, as described in Paragraph 20 of the SoAF.

20. “You,” “Your,” or “Your company” shall mean the responding Defendant, its present or former predecessors, subsidiaries, departments, divisions, joint ventures, and affiliates, including without limitation, any organization or entity that the responding Defendant manages or controls, together with all present and former directors, officers, employees, agents, representatives, or any persons acting or purporting to act on behalf of the responding Defendant.

### **INSTRUCTIONS**

1. In producing documents and other materials, You must furnish all documents in Your possession, custody, or control, regardless of whether such documents or materials are possessed directly by You, Your employees or former employees, agents or former agents, parents, subsidiaries, affiliates, investigators, or by Your attorneys or their employees, agents, vendors, or investigators.

2. All documents shall be produced in the same order as they are kept or maintained by You in the ordinary course of Your business. All documents shall be produced in the file folder, envelope, or other container in which the documents are kept or maintained.

3. Documents attached to one another should not be separated. If any portion of any document is responsive to any portion of the document requests below, then the entire document must be produced.

4. Documents shall be produced in such fashion as to identify the natural person in whose possession they were found (i.e., the document custodian).

5. If any document responsive to any of these requests is privileged, and the document or any portion of the document requested is withheld based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support of that claim, including the following information:

- a. the exact basis for withholding the document;
- b. the date of such communication;
- c. the medium of such communication;
- d. the general subject matter of such communication (such description shall not be considered a waiver of Your claimed privilege);
- e. the identity of any document that was the subject of such communication and the present location of any such document;
- f. the identity of all persons involved in such communication; and
- g. the identity of any document which records, refers, or relates to such communication and the present location of any such document.

6. Each document requested herein should be produced in its entirety and without deletion, redaction, or excision, except as permitted by a recognized privilege, regardless of whether You consider the entire document or only part of it to be relevant or responsive to these document requests. If You have redacted any portion of a document on the ground of privilege, stamp the word “REDACTED” beside the redacted information on each page of the document You have redacted.

7. Each request for documents seeks production of all documents described along with any attachments, drafts, and non-identical copies in any language whatsoever, in the possession, custody, or control of You or Your respective agents or attorneys. You are specifically instructed to review any storage and archive facilities and the personal files, records, notes, correspondence, daily calendars, telephone logs, and records of all persons who would likely have responsive documents.

### **REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1.** The executed versions of every 3PA contract with a vendor.

**REQUEST NO. 2.** All documents and communications regarding CDK's Managed Interface Agreement with (a) Cox Automotive and (b) AutoLoop.

**REQUEST NO. 3.** All documents and communications regarding the 3PA fees to be charged to (a) Cox Automotive, (b) AutoLoop, and (c) MVSC.

**REQUEST NO. 4.** All documents and communications regarding access to dealer data on a CDK DMS through the 3PA program by (a) Cox Automotive, (b) AutoLoop, and (c) MVSC.

**REQUEST NO. 5.** All documents and communications regarding whether data received by a (a) Cox Automotive or (b) AutoLoop application from a CDK DMS may be shared with another application run by (a) Cox Automotive or (b) AutoLoop.

**REQUEST NO. 6.** All documents and communications regarding the Most Favored Nations clause – or anything like it – in the Managed Interface Agreement between Cox Automotive and CDK.

**REQUEST NO. 7.** All documents and communications regarding any instance in which a vendor received equal or better pricing than Cox Automotive for data integration under the 3PA program from 2015 to the present.

**REQUEST NO. 8.** All documents and communications regarding any representation made to Cox Automotive that it would pay the lowest rates for integration services.

**REQUEST NO. 9.** All documents regarding 3PA Governance. *See, e.g.*, CDK-0001039, at 46.

**REQUEST NO. 10.** All documents and communications regarding any DMS access restrictions, to which CDK add-on applications are not subject, that CDK places on third-party add-on applications.

**REQUEST NO. 11.** All documents and communications regarding allowing applications to create or modify “repair orders.” *See, e.g.*, CDK-0000786, at 818.

**REQUEST NO. 12.** All documents and communications regarding allowing applications to finalize purchasing and leasing transactions. *See id.*

**REQUEST NO. 13.** All documents and communications regarding any “category restrictions” in place at any time with respect to data integration. *See, e.g.*, CDK-0001039, at 64.

**REQUEST NO. 14.** All documents and communications relating to any “CVR Category” for data access by electronic vehicle registration and titling vendors.

**REQUEST NO. 15.** All documents and communications relating to any “Closed Category” for data access by electronic vehicle registration and titling vendors.

**REQUEST NO. 16.** All communications with Nissan Motor Acceptance Corporation, American Honda Finance Corporation, or their affiliates regarding Dealertrack’s Sales and F&I solution.

**REQUEST NO. 17.** All documents and communications concerning the process of transitioning dealers from CDK’s DMS to Dealertrack’s DMS.

**REQUEST NO. 18.** All documents and communications regarding impeding, blocking, or in any way making it difficult for a dealer to switch from CDK’s DMS to a competing DMS, including Dealertrack’s DMS. For the avoidance of doubt, this Request includes all communications and documents regarding a dealer’s ability to transfer the dealer’s data stored on the CDK DMS to a competing DMS.

**REQUEST NO. 19.** All documents and communications regarding “push” notifications for 3PA or similar functionality provided to CDK’s own add-on applications.



**REQUEST NO. 20.** All documents regarding functionality, data access, or level of data integration provided to one vendor but not offered to a competing vendor or vendors.

**REQUEST NO. 21.** All documents and communications regarding any purported burden placed on a CDK DMS by the applications of (a) Cox Automotive or (b) AutoLoop.

**REQUEST NO. 22.** All documents and communications regarding the response time for 3PA interfaces from the time they are requested by a vendor until the time they are actually activated.

**REQUEST NO. 23.** All documents and communications regarding “Project Peach.”

**REQUEST NO. 24.** All documents and communications regarding Dealertrack Registration & Titling’s access to the CDK DMS.

**REQUEST NO. 25.** All documents and communications regarding RTS participating in the 3PA program.

**REQUEST NO. 26.** All documents and communications regarding AutoLoop’s application to join the 3PA program.

**REQUEST NO. 27.** All documents and communications regarding CDK’s certification of AutoLoop’s products for the 3PA program under the January 2016 Statement of Work between AutoLoop and CDK.

**REQUEST NO. 28.** All documents and communications regarding CDK’s decision to let AutoLoop use independent third-party integrators to provide data integration services to CDK dealers after AutoLoop’s acceptance into the 3PA program.

**REQUEST NO. 29.** All communications – and all documents regarding those communications – between CDK and dealers regarding (a) Cox Automotive, (b) AutoLoop, and (c) MVSC.

**REQUEST NO. 30.** All documents and communications relating to any threat or perceived threat to Your DMS business posed by add-on applications, including but not limited to add-on applications provided by Cox Automotive.

**REQUEST NO. 31.** All documents and communications between CDK and OEMs or car manufacturers regarding (a) Cox Automotive, (b) AutoLoop, and (c) MVSC.

**REQUEST NO. 32.** All communications, and documents related to those communications, between CVR and CDK concerning MVSC, including but not limited to: (1) MVSC's access to dealer data stored on the CDK DMS; (2) MVSC's presence and market share in California, Illinois, or any other state EVR market; (3) MVSC's expansion or potential expansion into states beyond California; and (4) any competitive threat or perceived competitive threat posed by MVSC to CVR.

**REQUEST NO. 33.** All communications, and documents related to those communications, between CDK and Reynolds concerning or relating to MVSC.

**REQUEST NO. 34.** All documents and communications related to MVSC's attempts or applications to join the Your data integration program, including but not limited to internal communications regarding whether to permit MVSC to participate in Your data integration program; internal communications regarding any competitive threat that permitting MVSC to join Your data integration program might pose to CVR; and the terms and pricing offered to MVSC.

**REQUEST NO. 35.** All documents and communications related to any other application or attempt by any EVR provider, other than MVSC, to join Your data integration program, including the terms and pricing offered to any such EVR vendor.

**REQUEST NO. 36.** All documents and communications regarding any EVR provider currently participating in Your data integration program, including when they started participating; the pricing they pay for participation; their applications to participate in the program; Your internal considerations regarding their applications; the data elements they receive and /or have access to; and the state EVR markets in which they participate.

**REQUEST NO. 37.** All communications, and documents related to those communications, between You and Your dealer customers regarding MVSC, including but not limited to communications between You and Your dealer customers concerning (1) the way in which MVSC accesses dealer data; (2) MVSC's attempts to join the 3PA program and/or 3PA certification status; and (3) MVSC's security and data practices.

**REQUEST NO. 38.** All communications and documents concerning or mentioning any MVSC executive, including but not limited to Don Armstrong, Kelly Kimball, Joseph Nemelka, and John Brueggeman.

**REQUEST NO. 39.** All communications and documents concerning CDK's consideration or evaluation of whether to acquire or purchase MVSC.

**REQUEST NO. 40.** All communications and documents concerning any efforts by You to block or impede MVSC's access to data for a dealer using Your DMS platform.

**REQUEST NO. 41.** All communications and documents concerning MVSC's use of independent integrators, including but not limited to Authenticom, SIS, and ProQuotes, to access data for a dealer using Your DMS platform.

**REQUEST NO. 42.** All communications and documents concerning the importance of having real time or bi-directional data integration in order to provide EVR services in Illinois, California, or any other state EVR market.

**REQUEST NO. 43.** Documents sufficient to show CVR's market share and customer base in every state in which it operates, from 2011 to present.

**REQUEST NO. 44.** All documents and communications concerning CVR's customer base and market share in California and Illinois, from 2011 to present.

**REQUEST NO. 45.** All documents and communications concerning any market analysis or competitive analysis of the EVR markets in California and Illinois.

**REQUEST NO. 46.** All documents and communications concerning CVR's operational costs, revenues, profitability, and financial projections and forecasts, from 2011 to present.

**REQUEST NO. 47.** All documents and communications concerning deficiencies or perceived deficiencies in CVR's product and service level. For the avoidance of doubt, this Request includes not only internal documents and communications but also communications with third parties (including CVR's dealer customers) regarding deficiencies or perceived deficiencies in CVR's product and service level.

**REQUEST NO. 48.** All documents and communications concerning the product quality or perceived product quality of CVR's competitors, including but not limited to MVSC.

**REQUEST NO. 49.** All documents and communications regarding any delays or backlogs by CVR in processing vehicle registrations and titles, including but not limited to any such delays or backlogs in California.

**REQUEST NO. 50.** All documents and communications concerning any advantage or perceived advantage CVR has over its competitors because of CVR's ability to access dealer data stored on the CDK and Reynolds DMSs.

**REQUEST NO. 51.** All documents and communications concerning the costs associated with entering a new EVR market, including costs associated with legal licensing and DMV requirements and capital and technological costs.

**REQUEST NO. 52.** Documents sufficient to show CVR's ownership structure, including documents sufficient to show how CVR's revenues and profits are divided between CDK and Reynolds.

**REQUEST NO. 53.** All documents and communications relating to Reynolds' ownership interest in CVR, including when that interest was acquired; why Reynolds acquired that interest; from whom Reynolds acquired that interest; how much Reynolds paid for that ownership interest; and what Reynolds' rights are with respect to its ownership interest.

**REQUEST NO. 54.** All documents and communications relating to the financial benefits received by Reynolds and CDK relating to their ownership interest in CVR, including any allocated profits or other financial benefit, from 2011 to the present.

**REQUEST NO. 55.** The operative CVR ownership agreement between CDK and Reynolds.

**REQUEST NO. 56.** All iterations of CVR's organizational chart from 2011 to the present.

**REQUEST NO. 57.** All documents concerning CDK's involvement in the operation of CVR, including but not limited to CDK's involvement in CVR's management, budget and

capital investments, hiring, firing, personnel decisions, salary and bonus allotments, strategic priorities, sales and marketing efforts, and other daily business activities.

**REQUEST NO. 58.** All documents and communications between anyone at CVR, on the one hand, and anyone at CDK, on the other, including regarding the operations, finances, and/or management of CVR.

**REQUEST NO. 59.** All communications between CDK and Reynolds regarding CVR.

**REQUEST NO. 60.** All documents and communications relating to CVR's acquisition of AVRS, including the strategic and financial considerations in CVR's acquisition of AVRS.

**REQUEST NO. 61.** All documents and communications regarding deficiencies or perceived deficiencies in AVRS's product and service levels after the acquisition. For the avoidance of doubt, this Request includes not only internal documents and communications but also communications with third parties (including AVRS's dealer customers) regarding deficiencies or perceived deficiencies in AVRS's product and service level.

**REQUEST NO. 62.** All documents and communications regarding instances in which CVR or AVRS uses or used independent integrators for access to dealer data on a DMS platform, whether CDK's, Reynolds', or any other DMS platform.

**REQUEST NO. 63.** All documents and communications regarding any instance in which an add-on application owned (or partly owned) by CDK or Reynolds uses or used independent integrators for access to dealer data on a DMS platform, whether CDK's, Reynolds', or any other DMS platform.

**REQUEST NO. 64.** All documents relating to CVR's Board of Directors or any equivalent governing body for CVR. This Request has no date limitation. This Request includes, but is not limited to:

- a. All documents relating to the composition of CVR's Board of Directors;
- b. Identification of every member of CVR's Board of Directors through time;
- c. All materials presented to CVR's Board of Directors;
- d. All materials considered by CVR's Board of Directors;
- e. All minutes of meetings of CVR's Board of Directors; and
- f. All communications between or among CVR's Board of Directors.

**REQUEST NO. 65.** All communications between You and any customer or former customer of Authenticom regarding data integration services or data access, including Team Velocity, Automotive Masterminds, or any other vendor customer of Authenticom.

**REQUEST NO. 66.** All communications between You and any dealer customer or former dealer customer of Authenticom regarding data integration services or data access.

**REQUEST NO. 67.** All documents concerning Your evaluation of the market for data access / integration services, including what companies compete with You for provision of data access / data integration services.

**REQUEST NO. 68.** All documents concerning Your cost of capital, cost of equity, cost of debt, and/or weighted average cost of capital, including any documents upon which any of the foregoing are based.

**REQUEST NO. 69.** All documents concerning the economic value of data or data access to dealers, vendors, or DMS providers, including any economic value placed by You on Your ability to deny, restrict, or in any way control access to data on Your DMS platform.

**REQUEST NO. 70.** All communications between CDK and any potential acquirer or acquirers, including The Carlyle Group, Silver Lake, Vista Equity Partners, Bain Capital, Thoma

Bravo, and Advent International (or any person acting on behalf of the foregoing), regarding the valuation of CDK, its subsidiaries, or any aspect of their business.

**REQUEST NO. 71.** All documents regarding CDK's Fortellis Automotive Exchange, including all communications with dealers (including AutoNation, Lithia, Berkshire Automotive, Group One, and the Larry Miller Group) and vendors; historical data or projections regarding the costs of research and development, pricing, subscriptions, revenues, and profits.

**REQUEST NO. 72.** All projections, forecasts, or other financial analyses regarding CDK's 3PA, OEM DCS, and/or DMI data services programs.

**REQUEST NO. 73.** All documents concerning the following conferences and/or meetings from 2009 to the present: the National Automobile Dealers Association Show; the Digital Dealer Conference & Expo; or any other industry conference. For the avoidance of doubt, this Request includes all documents concerning: the identity of any of Your employees that attended the conference and/or meeting; any booth or other exhibition space obtained by You; and the exhibitor list and/or floor plan for any such show.

**REQUEST NO. 74.** All telephone records – whether landline or cell phone – reflecting calls made or received by any Reynolds employee and any employee of CDK from 2014 to the present.

**REQUEST NO. 75.** All telephone records – whether landline or cell phone – for Your document custodians from 2014 to the present.

**REQUEST NO. 76.** All documents concerning any training provided by You to Your employees regarding antitrust or competition laws.

**REQUEST NO. 77.** All documents concerning CDK's Secure the DMS initiative.



**REQUEST NO. 78.** All Secure the DMS Dashboard Reports (*see, e.g.*, CDK-0841086, at 87), including all data used to prepare such reports.

**REQUEST NO. 79.** All documents regarding access by ReverseRisk to CDK's DMS platform.

**REQUEST NO. 80.** All documents concerning "hostile integration" or use of non-authorized usernames or passwords to extract data from the CDK or Reynolds platforms.

**REQUEST NO. 81.** Documents sufficient to show CDK's revenue, profit (including profit margins), and costs for providing data integration services, on a monthly basis, from January 1, 2000 to the present, with the revenues, profits, and costs of 3PA, DMI, and IntegraLink broken out separately.

**REQUEST NO. 82.** Documents sufficient to show transactional sales data (including sales, profit, and cost data) on a per-customer and per-transaction basis for data integration services from January 1, 2006 to the present, with the data for 3PA, DMI, and IntegraLink broken out separately. For the avoidance of doubt, this Request includes, without limitation, the following data linked to each data integration service transaction:

- a. Date and location of transaction;
- b. Data integration service customer;
- c. Specific data integration service purchased;
- d. Information tied to the specific data integration service purchased, including the unit price, unit cost, quantity, and applicable discounts;
- e. CDK salesperson and applicable commission;
- f. Order number and other identifying order information; and

- g. Any documents necessary to interpret the contents of these data fields, including abbreviation keys and explanations.

**REQUEST NO. 83.** All reports and analyses pertaining to CDK's marketing and sales of data integration services from January 1, 2009 to the present, with information for 3PA, DMI, and IntegraLink broken out separately. For the avoidance of doubt, this Request includes, without limitation:

- a. Sales reports;
- b. Sales representative performance reports;
- c. Marketing plans;
- d. Marketing reports, including sales promotions and discounts;
- e. Strategic plans, including pricing strategy;
- f. Cost accounting reports;
- g. General ledger reports;
- h. Charts of accounts;
- i. Analyses of competitive position, including market share; and
- j. Profit and loss reports.

**REQUEST NO. 84.** Documents sufficient to show CDK's projections with respect to revenue and profit for providing data integration services from January 1, 2009 to the present.

**REQUEST NO. 85.** Documents sufficient to show CDK's projections with respect to costs for providing data integration services from January 1, 2009 to the present, with the projections for 3PA, DMI, and IntegraLink broken out separately.

**REQUEST NO. 86.** All documents and communications concerning CDK's projections with respect to its data integration services from January 1, 2009 to the present. For the

avoidance of doubt, this Request includes, without limitation, documents and communications relating to estimates, forecasts, and budgets for revenue, profit, and costs associated with CDK's provision of data integration services.

**REQUEST NO. 87.** All documents and communications concerning CDK's internal valuations of its data integration service businesses, separate and apart from its DMS business, from January 1, 2009 to the present, including, without limitation, valuations of 3PA, DMI, and IntegraLink.

**REQUEST NO. 88.** All documents and communications concerning CDK's internal valuations of its DMS business, separate and apart from its data integration services, from January 1, 2009 to the present.

**REQUEST NO. 89.** All documents and communications from January 1, 2009 to the present concerning industry publications or industry reports with respect to data integration services.

**REQUEST NO. 90.** All documents and communications from January 1, 2009 to the present concerning industry publications or industry reports with respect to DMS services.

**REQUEST NO. 91.** All documents and communications CDK relied upon from January 1, 2009 to the present in creating projections, estimates, forecasts, and budgets for revenue, profit, and costs associated with CDK's provision of data integration services.

**REQUEST NO. 92.** Documents sufficient to show the number of connections CDK has established between a vendor and a dealer's data for purposes of transmitting dealer data to the vendor, broken down by customer, specific service (3PA, DMI, or IntegraLink), and date, from January 1, 2009 to the present.

**REQUEST NO. 93.** CDK's "win/loss" reports, communications, analyses, or any other documents sufficient to show the data integration customers (for 3PA, DMI, and IntegraLink, broken out separately) that CDK has lost every year since January 1, 2009, including the reasons the customer switched from a CDK data integration service to a non-CDK data integration service and the identity of the data integration service to whom the customer switched.

**REQUEST NO. 94.** CDK's "win/loss" reports, communications, analyses, or any other documents sufficient to show the data integration customers (for 3PA, DMI, and IntegraLink, broken out separately) that CDK has won every year since January 1, 2009, including the reasons the customer switched to a CDK data integration service and the identity of the data integration service from whom the customer switched.

**REQUEST NO. 95.** All documents and communications regarding the length of time to complete a request to receive data from or send data to a CDK DMS through the 3PA program.

**REQUEST NO. 96.** All documents and communications regarding making "push" functionality available for the 3PA program.

**REQUEST NO. 97.** All documents and communications regarding how frequently vendors are allowed to pull, poll, or transfer data from the CDK DMS.

**REQUEST NO. 98.** All documents and communications regarding how CDK determined what kinds of data, information, or technical specifications to require vendors to provide as part of the 3PA certification process, including "workflow" models, live demonstrations of the add-on applications, justifications for how add-on applications use each data element, and the add-on application's security features.

**REQUEST NO. 99.** All documents and communications regarding any CDK policies or guidelines designed to prevent competitively sensitive information submitted by vendors seeking

3PA certification from being shared with CDK's sales teams, add-on application development teams, or any other components of CDK other than those with direct responsibility for engineering the integration of the vendors' add-on applications with the CDK DMS.

**REQUEST NO. 100.** All documents and communications regarding information, data, or technical specifications shared by vendors with CDK as part of the 3PA certification process used by CDK for any purpose other than engineering the integration of the vendors' add-on applications with the CDK DMS, including, for example, development of applications by CDK.

**REQUEST NO. 101.** All pictures of the cake from party for the one-year anniversary of the 2015 agreements between CDK and Reynolds.

Dated: May 25, 2018

Respectfully submitted,

*/s/ Derek T. Ho*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2018, I caused a true and correct copy of the foregoing Individual Plaintiffs' First Set of Requests for the Production of Documents for Defendant CDK Global, LLC to be served by email upon the following recipients:

CDK-MDL-Team@mayerbrown.com

reynoldsteam@gibbsbruns.com;

reynolds-smrh-pldg@sheppardmullin.com;

KStetsko@perkinscoie.com;

CTeichner@perkinscoie.com

/s/ Derek T. Ho

Derek T. Ho

# **Exhibit 6**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: DEALER MANAGEMENT  
SYSTEMS ANTITRUST LITIGATION**

**This Document Relates To: ALL ACTIONS**

MDL No. 2817  
Case No. 18-cv-00864  
Hon. Amy J. St. Eve

**DEALERSHIP CLASS PLAINTIFFS' FIRST SET OF REQUESTS FOR THE  
PRODUCTION OF DOCUMENTS FOR DEFENDANT CDK GLOBAL, LLC**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs Baystate Ford Inc.; Cliff Harris Ford, LLC d/b/a Warrensburg Ford; Hoover Automotive, LLC d/b/a Hoover Dodge Chrysler Jeep of Summerville; JCF Autos LLC d/b/a Stevens Jersey City Ford; Jericho Turnpike Sales LLC d/b/a Ford & Lincoln of Smithtown; Jim Marsh American Corporation d/b/a Jim Marsh Mitsubishi Suzuki Kia Mahindra; John O'Neil Johnson Toyota, LLC; Kenny Thomas Enterprises, Inc. d/b/a Olathe Toyota; Marshall Chrysler Jeep Dodge, LLC; Patchogue 112 Motors LLC d/b/a Stevens Ford; Pitre Imports, LLC d/b/a Pitre Kia; Pitre, Inc. d/b/a Pitre Buick GMC; Teterboro Automall, Inc. d/b/a Teterboro Chrysler Dodge Jeep Ram; Waconia Dodge, Inc. d/b/a Waconia Dodge Chrysler Jeep Ram; and Warrensburg Chrysler Dodge Jeep, L.L.C. ("Dealership Class Plaintiffs") request that CDK Global, LLC ("CDK") produce all documents in its actual or constructive possession, custody, or control related directly or indirectly to any of the matters described below, subject to the Definitions and Instructions set forth herein. All documents and tangible things responsive hereto shall be produced to the undersigned counsel, or at such other location as is mutually acceptable to the parties, by the time prescribed, or at such other time and place as the parties mutually agree.



## **I. DEFINITIONS**

This section sets forth specific definitions applicable to certain words and terms used herein. Unless words or terms have been given a specific definition in this section or in a specific Request, each word or term shall be given its usual and customary dictionary definition, except where a word or term has a specific customary and usage definition in your trade and industry. In that case, the word or term shall be interpreted in accordance with the specific customary and usage definition.

1. “Add-on application” means a software application that dealers use in addition to or separate from their Dealer Management System (“DMS”) software in the course of operating their dealerships.

2. “All” shall be construed as all and any, and the term “any” shall be construed as all and any.

3. “Authenticom” shall mean Authenticom, Inc. (Plaintiff in *Authenticom, Inc. v. CDK Global, LLC*, No. 17-cv-318 (W.D. Wis.), now consolidated as a part of the above-captioned MDL), a provider of Data Integration Services in the automotive industry based in La Crosse, Wisconsin. “Authenticom” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

4. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the document request all responses that might otherwise be construed to be outside of its scope.

5. “CDK” shall mean CDK Global, LLC, a publicly traded Delaware corporation with its corporate headquarters and principal place of business located at 1950 Hassell Road, Hoffman Estates, Illinois. “CDK” shall include the Dealer Services business of Automatic Data Processing,

Inc. (“ADP”), or any other predecessor to CDK. “CDK” shall also include its present or former subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants, including those of ADP’s Dealer Services business or any other predecessor to CDK.

6. “Communication” shall mean any exchange or transfer of information, whether electronic, written, oral, or in any other form. The phrase “communication between” is defined to include instances where one party addresses the other party but the other party does not necessarily respond.

7. “Data access policies” means Your policies with respect to the ability of dealers to authorize independent integrators to access data on the DMS or otherwise grant third parties access to their data on the DMS.

8. “Data integrator(s)” shall refer to any service provider(s) that provide access by any means to dealer data on the DMS database, whether by extracting the data, writing data back into the DMS, or both. For the avoidance of doubt, “data integrator(s)” includes CDK (through its 3PA program) and Reynolds (through its RCI program).

9. “Data Integration Services” or “DIS” shall refer to the extracting, transforming, integrating, and/or organizing of data housed on dealer data management systems.

10. “Dealers” or “Dealerships” shall refer to businesses engaged in retail automobile sales, including but not limited to the Dealership Class Plaintiffs in this litigation.

11. “DMI” shall mean Digital Motorworks, Inc., a data integrator and wholly owned subsidiary of CDK. “DMI” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

12. “DMS” shall mean Dealer Management System, the mission-critical enterprise software that manages nearly every function of a dealer’s business. DMS software handles and integrates the critical business functions of a car dealership, including sales, financing, inventory management (both vehicle and parts), repair and service, accounting, payroll, human resources, marketing, and more. The DMS also operates as a database, housing dealer data related to inventory, customer, sales, and service information.

13. The “DMS Market” shall mean the market for the provision of DMS services to new car franchised automobile dealers.

14. “Document” and “documents” are used in the broadest extent permitted by Federal Rule of Civil Procedure Rule 34(a) and shall include, but not be limited to any original, reproduction or copy, and/or non-identical copy (i.e., copy with marginal notes, deletions, etc.) of any kind of writings, drawings, graphs, charts, photographs, videos or sound recordings, images, data or data compilations, and/or documentary material, including but not limited to emails, letters, text messages, press releases, postings, instructions, memoranda, notes, diaries, journals, calendars, contract documents, publications, advertisements, calculations, estimates, vouchers, minutes of meetings, invoices, reports, studies, computer tapes, computer disks, computer cards, computer files, photographs, negatives, slide decks or slides, dictation belts, voice tapes, and telegrams. This includes any materials documenting, reflecting, or relating to discussions, conversations, telephone calls, meetings, presentations, conferences, seminars, and/or other spoken or oral communications. Drafts or non-identical copies of, and amendments or supplements to, any of the foregoing are separate documents within the meaning of this term.

15. “FTC Complaint” means the Federal Trade Commission Administrative Complaint, *In the Matter of CDK Global, Inc. et al.*, Index No. 1710156, ECF No. 9382 (March 19, 2018) (Redacted Public Version).

16. “IntegraLink” shall mean IntegraLink, a data integrator and wholly owned subsidiary of CDK. “IntegraLink” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

17. “Including” (in addition to its usual meanings) shall mean including but not limited to.

18. “Meeting” shall mean, without limitation, any assembly, convocation, encounter, communication or contemporaneous presence (whether in person or via any electronic, computer-assisted, digital, analog, video, or telephonic method of communication) of two or more persons for any purpose, whether planned or arranged, scheduled or not.

19. “Person” or “persons” shall mean, without limitation, any individual, corporation, partnership or any variation thereof (*e.g.*, limited partnership, limited liability partnership), limited liability company, proprietorship, joint venture, association, government entity, group or other form of legal entity.

20. The terms “relating to,” “related to,” “referring to,” “regarding,” or “with respect to” shall mean, without limitation, the following concepts: concerning, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

21. “Reynolds” shall mean The Reynolds & Reynolds Company, an Ohio corporation with its corporate headquarters and principal place of business located at One Reynolds Way, Kettering, Ohio. “Reynolds” shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

22. “SecurityFirst” shall mean the CDK initiative to revamp its 3PA program publicly announced in June 2015.

23. “SIS” means Superior Integrated Solutions, Inc. and shall include its present or former predecessors, subsidiaries, divisions, departments, operating units, directors, officers, managers, employees, attorneys, and accountants.

24. “Third Party Integrators” shall mean data integrators that provide Data Integration Services on a DMS platform and are independent of or unaffiliated with the DMS provider.

25. “Vendors” or “application providers” shall mean Vendors who provide software applications that perform operations functions for dealerships, such as inventory management, customer relationship management, and electronic vehicle registration and titling, among other functions.

26. “You,” “Your” or “Your Company” mean the responding defendant, its predecessors, successors, parents, subsidiaries, departments, divisions, joint ventures, and affiliates, including without limitation any organization or entity that the responding defendant manages or controls, together with all present and former directors, officers, employees, agents, representatives or any persons acting or purporting to act on behalf of the responding defendant.

27. Any term stated in the singular includes the plural and vice versa.

28. The use of any tense of any word includes all other tenses.

## II. INSTRUCTIONS

1. All documents shall be produced as they are maintained in the ordinary course of business, and shall be produced in their original folders, binders, covers or containers, or facsimile thereof, *i.e.*, documents maintained electronically shall be produced in the manner in which such documents are stored and retrieved.

2. In responding to these Requests, you shall produce all responsive documents (including those stored electronically), which are in your possession, custody or control, or in the possession, custody or control of your predecessors, successors, parents, subsidiaries, divisions or affiliates, or any of your respective directors, officers, managing agents, agents, employees, attorneys, accountants or other representatives. A document shall be deemed to be within your control if you have the right to secure the document or a copy of the document from another person having possession or custody of the document.

3. Each Request for documents seeks production of all documents described along with any attachments, drafts, and non-identical copies in any language whatsoever and created or used for any purpose, including, without limitation, the making of notes thereon. You are specifically instructed to review any storage and archive facilities and the personal files, records, notes, correspondence, daily calendars, telephone logs, and records of all persons who would likely have responsive documents.

4. To the extent that there are documents containing information relevant to these Requests that are currently in electronic format, the documents are to be produced in their native format.

5. Privilege logs shall be promptly provided and must be sufficiently detailed and informative to justify the privilege. No generalized claims of privilege or work-product protection

shall be permitted. With respect to each document or communication for which a claim of privilege or work product is made, the asserting party must at the time of assertion identify:

(a) The exact basis for withholding or redacting the document or communication;

(b) The medium of such document or communication;

(c) The general subject matter of such document or communication (such description shall not be considered a waiver of Your claimed privilege);

(d) Any document that was the subject of such document or communication and the present location of any such document;

(e) All persons making or receiving the privileged or protected document or communication; and

(f) Any document which records, refers, or relates to such document or communication and the present location of any such document.

(g) The steps taken to ensure the confidentiality of the documents or communication, including affirmation that no unauthorized persons have received the document or communication;

6. If a portion of any document responsive to these Requests is withheld under claim of privilege pursuant to Instruction No. 5, any non-privileged portion of such document must be produced with the portion claimed to be privileged redacted.

7. The log should also indicate, as stated above, the location where the document was found.

8. You are to produce each document requested herein in its entirety, without deletion or excision (except as qualified by Instructions Nos. 5 and 6 above), regardless of whether you consider the entire document to be relevant or responsive to the Requests.

9. Documents attached to one another should not be separated. If any portion of any document is responsive to any portion of the document Requests below, then the entire document, including any attachments to the document, must be produced.

10. Whenever a document is not produced in full or is produced in redacted form, so indicate on the document and state with particularity the reason or reasons it is not being produced in full, and describe to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document which are not being produced.

11. If a document responsive to these Requests was at any time in your possession, custody or control but is no longer available for production, as to each such document state the following information:

- (a) Whether the document is missing or lost;
- (b) Whether it has been destroyed;
- (c) Whether the document has been transferred or delivered to another person, and, if so, at whose request;
- (d) Whether the document has been otherwise disposed of; and
- (e) A precise statement of the circumstances surrounding the disposition of the document and the date of its disposition.

12. References to specific portions of your contracts with Dealers, Vendors, and others are provided solely as a convenience – to assist you in understanding the relevance or the types of



documents sought – and are not intended to, and do not, narrow or otherwise limit the scope of the Request.

13. A Request to produce “all documents” means you must produce every non-identical document responsive to the subject matter of the Request. A Request to produce “documents sufficient to” identify or describe certain facts means you may select which documents to produce in response to the Request so long as you reasonably believe they include all of the information relating to the subject matter of the Request that would be reflected in all of the documents responsive to the Request. In lieu of producing “documents sufficient to” identify or describe certain facts, you may produce “all documents” relating to the subject matter of the Request. In that event, you should state that you have produced “all documents” relating to the Request in your written response to these Requests.

14. Provide a source list that clearly identifies who maintained the document and the location from where it was collected.

15. Each Request herein shall be construed independently. No Request shall be construed by reference to any other Request for the purpose of limiting the scope of the answers to such Request.

16. If no document responsive to a Request exists, or if the only documents responsive to a Request are not within your possession, custody or control, please so state in your written response to the Request.

17. These Requests shall be deemed continuing Requests so as to require supplemental responses if You obtain or discover additional documents between the time of initial production and the time of the trial. Such supplemental documents must be produced promptly upon

discovery. Dealership Class Plaintiffs specifically reserve the right to seek supplementary responses and the additional supplementary production of documents before trial.

18. These Requests incorporate by reference all Requests for the production of documents previously served on defendant CDK by Authenticom in *Authenticom, Inc. v. CDK Global, LLC*, No. 17-cv-318 (W.D. Wis.), now consolidated as a part of the above-captioned MDL.

### **III. RELEVANT TIME PERIOD**

Except as otherwise specified, each document Request concerns the time period from January 1, 2013 through the present (the “Relevant Time Period”). In responding to the Requests, you must produce all documents created, dated, prepared, drafted, generated, modified, sent, provided, obtained, used, or received during the Relevant Time Period, or the time period otherwise specified by the Request, that are responsive, in whole or in part, to the subject matter of the Request, and all responsive documents created before or after the Relevant Time Period, or the time period otherwise specified by the Request, that relate, in whole or in part, to facts, transactions, events, or occurrence taking place, or anticipated to take place, during the Relevant Time Period or the time period otherwise specified by the Request.

**REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:**

All documents concerning CDK's post-merger plans for Auto/Mate, including the planned downgrading of features and service as well as the prevention of CDK's larger customers from migrating from CDK as detailed in Paragraph 6 of the March 19, 2018 FTC Complaint.

**REQUEST NO. 2:**

All documents concerning any analysis by CDK regarding the effect of the acquisition of Auto/Mate on franchise Dealers.

**REQUEST NO. 3:**

All documents concerning any analysis by CDK regarding Auto/Mate's "aggressive competition," "winning an increasing share of opportunities," and Auto/Mate "successfully acquiring large dealership customers" as detailed in Paragraph 40 of the FTC Complaint.

**REQUEST NO. 4:**

All documents regarding CDK's 2016 plan designed to reduce the risk that some of its customers would switch to Auto/Mate as detailed in Paragraph 42 of the FTC Complaint.

**REQUEST NO. 5:**

All documents concerning the plans outlined in Paragraph 56 of the FTC Complaint regarding CDK's post-acquisition plan that would remove a DMS platform as a competitive alternative to CDK's other DMS products for many customers, which Dealer customers "highly value."

**REQUEST NO. 6:**

All documents regarding any cooperation, coordination, joint effort, assistance, exchange of information or technical knowhow, or any other type of collaboration between CDK and Reynolds in blocking any Third Party Integrators' access to Dealer data on their respective DMS platforms. There is no date limitation for this Request.

**REQUEST NO. 7:**

All documents regarding any VPN tunnel (or other direct access, *i.e.*, one that doesn't require use of login credentials) that CDK provided to any Third Party Integrators for accessing Dealer data on the CDK DMS, including any decision to rescind such access to Third Party Integrators.

**REQUEST NO. 8:**

All documents regarding CDK's policies concerning any changes to CDK's or other DMS providers' data access policies. There is no date limitation for this Request.

**REQUEST NO. 9:**

All documents regarding the ability of Dealers to authorize, or Vendors to use, Third Party Integrators to access data on non-CDK DMS, including the Reynolds DMS. There is no date limitation for this Request. For the avoidance of doubt, this Request includes, without limitation:

- (a) all communications with Dealers or Vendors, representations to Dealers or Vendors, or statements relating to Dealers or Vendors regarding the ability of Dealers to authorize, or Vendors to use, Third Party Integrators to access data on non-CDK DMS, including Reynolds DMS;

(b) all statements regarding the ability of Dealers to authorize, or Vendors to use, Third Party Integrators to access data on non-CDK DMS, including Reynolds DMS; and

(c) all documents regarding the ability of Dealers to authorize, or Vendors to use, Third Party Integrators to access data on non-CDK DMS, including Reynolds DMS.

**REQUEST NO. 10:**

All documents and communications from CDK to former Dealer customers regarding the differences or similarities between CDK and Reynolds with respect to data access policies. For the avoidance of doubt, this Request includes, without limitation, any documents or communications in which CDK marketed its open access policy as a point of differentiation with the Reynolds DMS.

**REQUEST NO. 11:**

All documents relating to CDK's "SecurityFirst" and/or "3PA Refresh" initiative. There is no date limitation for this Request. For the avoidance of doubt, this Request includes, without limitation:

(a) all presentations regarding the "SecurityFirst" and/or "3PA Refresh" initiative;

(b) all financial analyses conducted relating to the "SecurityFirst" and/or "3PA Refresh" initiative;

(c) all documents relating to the reasons CDK introduced the "SecurityFirst" and/or "3PA Refresh" initiative;

(d) all documents and communications with Dealers and Vendors regarding the "SecurityFirst" and/or "3PA Refresh" initiative, including communications concerning

blocking or threatening to block Dealers and/or Vendors that did not meet the requirements of the initiative from the CDK DMS;

(e) all documents concerning any certification requirements under the “SecurityFirst” and/or “3PA Refresh,” including any termination or threat of termination of a Dealer and/or Vendor for failure to meet the certification requirements;

(f) all documents and regarding any differences between the 3PA program before and after the “SecurityFirst” and/or “3PA Refresh” initiative;

(g) all documents with respect to the technological implementation of the “SecurityFirst” and/or “3PA Refresh” initiative; and

(h) all documents relating to any security or other technological enhancements instituted as part of the “Security First” and/or “3PA Refresh” initiative.

**REQUEST NO. 12:**

All documents regarding the ability of Dealers to extract their data from the CDK DMS manually, including when that capability was instituted; the means by which data is extracted; how the means to extract data manually changed, if they changed at all, over the Relevant Time Period; how often Dealers extract their own data for purposes of providing the data to Vendors; how the use of this functionality (*i.e.*, the incidence of use) has changed over the Relevant Time Period, if at all; and the means by which Dealers send their manually-extracted data to Vendors.

**REQUEST NO. 13:**

All documents and communications from CDK to Dealers (whether existing, former, or prospective DMS customers) regarding the differences or similarities between CDK and any other DMS provider with respect to data access policies. For the avoidance of doubt, this Request

includes, without limitation, any documents or communications in which CDK marketed its open access policy as a point of differentiation with the Reynolds DMS.

**REQUEST NO. 14:**

All documents concerning any other DMS provider. For the avoidance of doubt, this Request includes:

- (a) all documents concerning any other DMS provider's DMS and/or DMS services;
- (b) all documents concerning the system architecture of any other DMS or DMS provider, including but not limited to the technological aspects for retrieving data from any other DMS, blocking of third party access to other DMS, or any other relevant technological matter to the claims and defenses in this case; and
- (c) all documents concerning competition within the DMS or Data Integration Services market.

**REQUEST NO. 15:**

All documents concerning any of CDK's DMS customers switching or attempting to switch to a different DMS provider, including the time and expense associated with changing or switching DMS providers, as well as all documents concerning any of CDK's DMS customers who have discontinued use of CDK's services since January 1, 2014. For avoidance of doubt, this Request includes, without limitation:

- (a) all documents concerning any litigation or threatened litigation resulting from such a switch or attempted switch;

(b) all documents concerning restricting access to a former customer's CDK DMS data or threatening to restrict access to a customer's CDK DMS data if it switched to a new DMS provider;

(c) all documents concerning customers who have had a contract with CDK for DMS and/or DMS services and that contract was not renewed from January 1, 2014 to the present; and

(d) all documents concerning customers who have had a month to month contract with CDK at any time from January 1, 2014 to present, regardless of whether that customer is a current CDK customer.

**REQUEST NO. 16:**

All current signed Master Services Agreements and/or other contracts, agreements, and/or written understandings between CDK and its Dealer customers. Each agreement should include all documents that comprise the DMS contract between CDK and the Dealer, including any user guides, addendums, exhibits, and other documents that form the agreement between CDK and its Dealer customers.

**REQUEST NO. 17:**

All documents concerning any provision in CDK's DMS contracts that provide for automatic renewal or extension of CDK's DMS contracts.

**REQUEST NO. 18:**

All documents relating to any changes or proposed changes to material terms in the CDK DMS contract, including with respect to the use of Third Party Integrators; and automatic renewal and/or extension of the contract.



**REQUEST NO. 19:**

All documents sufficient to show (1) which Dealers use or used a CDK DMS; (2) when each Dealer customer first used a CDK DMS; (3) how long each Dealer customer's tenure as a client of CDK has lasted; and (4) if any Dealer no longer uses a CDK DMS, when Dealer ceased using the DMS provider. For the avoidance of doubt, CDK shall provide the above information for any Dealer that was a customer of CDK at any time during the Relevant Time Period.

**REQUEST NO. 20:**

All documents sufficient to show the monthly pricing for DMS services paid by each Dealer customer identified in Request No. 19.

**REQUEST NO. 21:**

All documents sufficient to show the total number of Dealers (both by Dealership group and by rooftop) that used a CDK DMS, broken down on a month-by-month basis.

**REQUEST NO. 22:**

All documents relating to any change in the pricing for DMS services paid by CDK's Dealer customers.

**REQUEST NO. 23:**

All documents sufficient to show the cost of CDK providing DMS services separate and apart from providing Data Integration Services.

**REQUEST NO. 24:**

All documents relating to any Dealer that once obtained DMS services from CDK, but no longer does, including documents sufficient to show the reasons why those Dealers no longer obtain DMS services from CDK.

**REQUEST NO. 25:**

Documents sufficient to show any up-front initiation fees, per-dealership setup or installation fees, per-transaction fees, or other one-time charges that CDK has charged to its Dealer customers for DMS services, broken down on a Dealer-by-Dealer basis. This Request includes documents sufficient to show when these fees or charges were instituted; why they were instituted; their amounts; and by how much they increase a Dealer's monthly DMS fees.

**REQUEST NO. 26:**

All documents relating to the pricing charged by other DMS providers, including but not limited to Reynolds.

**REQUEST NO. 27:**

All documents concerning restrictions on Vendors' use of Third Party Integrators to access DMS data on CDK systems or otherwise require that Vendors use the 3PA program to access data on CDK DMS systems. For the avoidance of doubt, this Request includes, without limitation, all documents concerning any provision in CDK's Vendor contracts that limit the ability of Vendors to use Third Party Integrators to access data on CDK DMS systems.

**REQUEST NO. 28:**

All documents sufficient to show what each Vendor paid for Data Integration Services on a month-by-month basis until they stopped using IntegraLink and/or DMI for each month of the Relevant Time Period. For the avoidance of doubt, if any Vendor so identified no longer obtains Data Integration Services from IntegraLink or DMI, provide documents and documents sufficient to show when they stopped and what they paid when they stopped.

**REQUEST NO. 29:**

All documents concerning restrictions on Dealers' use of third parties to access DMS data on the CDK systems. For the avoidance of doubt, this Request includes, without limitation:

- (a) all documents concerning any restrictions on Dealers' use of Third Party Integrators to access DMS data on CDK systems;
- (b) all documents concerning any provision in CDK's DMS contracts that limit the ability of Dealers to use Third Party Integrators to access data on CDK DMS systems;
- (c) all documents and communications with Dealers relating to whether they can (or cannot) authorize Third Party Integrators to access data on the CDK DMS, including any communications that cite provisions in a particular DMS contract to that effect;
- (d) all documents relating to the enforcement or threat of enforcement of CDK's DMS contract against Dealers with respect to third-party access to data on the CDK DMS; and
- (e) all documents relating to Dealer rights under DMS contracts to authorize third parties to access data on the CDK DMS.

**REQUEST NO. 30:**

All documents sufficient to show the technological aspects of:

- (a) how data extraction occurs from the DMS database when using Third Party Integrators;
- (b) extracting data for Third Party Integrators differs from those for (i) DMI or IntegraLink or (ii) participants of the 3PA program;
- (c) how manual extraction of data occurs from the DMS database; and

(d) how the technological aspects of manually extracting data from the DMS database differs from the technological aspects of extracting data for (i) DMI or IntegraLink or (ii) participants of the 3PA program.

**REQUEST NO. 31:**

All documents regarding CDK's use of any Third Party Integrator, including but not limited to Authenticom, for Data Integration Services. For the avoidance of doubt, this Request includes any instance in which a CDK-owned (wholly, jointly, or partially) add-on application used a Third Party Integrator for Data Integration Services with respect to any DMS platform.

**REQUEST NO. 32:**

All documents regarding data security and/or DMS system performance with respect to any Third Party Integrator's access to the Reynolds or CDK DMSs. There is no date limitation for this Request. For the avoidance of doubt, this Request includes, without limitation:

- (a) all documents relating to the effect of Third Party Integrators' access to the CDK DMS on the performance of the CDK DMS;
- (b) all documents relating to any data security incidents caused by Third Party Integrators' access to the CDK DMS; and
- (c) all documents relating to any specific system performance issue that was or is directly attributable to third parties' access to the CDK DMS.

**REQUEST NO. 33:**

All documents regarding any decision to block the access of a Third Party Integrator to the CDK DMS prior to the implementation of the "Security First initiative."

**REQUEST NO. 34:**

All documents sufficient to show how Dealer data is stored on the CDK DMS. For the avoidance of doubt, this Request includes, without limitation:

- (a) all documents sufficient to show whether a Dealer's data is stored separate from the data of other Dealers;
- (b) all documents sufficient to show whether a Dealer's data is commingled with data that does not belong to the Dealer;
- (c) all documents sufficient to show where Dealer data is stored (whether on servers at the Dealership, at CDK-managed server farms, at third-party managed server farms, or at some other location, or in some other manner); and
- (d) all documents sufficient to show how the storage of Dealer data may have changed over the Relevant Time Period.

**REQUEST NO. 35:**

All documents sufficient to show the specific changes to security measures instituted by CDK to protect security of Dealer data.

**REQUEST NO. 36:**

All documents referencing, relating to, or concerning the National Automobile Dealers Association in connection with Dealer data or data security, including, but not limited to, an August 28, 2013 memo of the National Automobile Dealers Association sent to members concerning Dealer data guidance and a 2014 memo entitled, "10 Steps Dealers Need To Take To Protect 'Dealer Data.'"

**REQUEST NO. 37:**

All documents demonstrating the attendance or participation of a CDK representative at any conference or convention where customers or potential customers attended, including but not limited to any Digital Dealer Conference or any National Auto Dealers Association conference or convention. This Request includes any memos, diary entries, and travel, accommodation, and restaurants receipts, or any other documentation evidencing reimbursement for attendance at the conference or convention.

**REQUEST NO. 38:**

All documents produced, used or distributed at any conference or convention where customers or potential customers attended, including but not limited to any Digital Dealer Conference or any National Auto Dealers Association conference or convention. This Request includes any memos, videos, emails and any other materials used to inform, instruct and/or train CDK representatives to market any of CDK's services to Dealers at any convention, meeting, gathering or informational events that would at any time include current or potential CDK customers.

**REQUEST NO. 39:**

Any Civil Investigative Demand served on CDK pertaining to alleged anticompetitive conduct and/or acquisitions or potential acquisitions by CDK and/or Reynolds. For avoidance of doubt, this request is for the Civil Investigative Demand itself and any attachments.

**REQUEST NO. 40:**

All documents concerning CDK sales data and information, including but not limited to invoices, relating to any data integrators or the following Vendors: TrueCar, Carfax, Autotrader, Cars.com, vAuto, Dealer.com, DealerSocket, RouteOne, NakedLime and DealerRater, and/or any of their subsidiaries, affiliates or related entities.

**REQUEST NO. 41:**

All documents exchanged between CDK and Reynolds and any Vendor relating to changes in data integration fees impacting (or potentially impacting) Vendors' prices and fees to Dealerships. This includes but is not limited to any documents or communications that relate in any way to Vendors increasing their prices and fees to Dealerships as a result of increases in data integration fees charged by CDK and/or Reynolds.

**REQUEST NO. 42:**

All documents concerning CDK's actual and projected financial results on a weekly, monthly, quarterly and/or yearly basis during the Relevant Time Period, including but not limited to:

- (a) internal projections;
- (b) profit and loss statements, analyses or projections;
- (c) cost analyses or projections;
- (d) analyses or projections of gross margins;
- (e) budgets;
- (f) marketing plans;
- (g) business plans or other planning documents; and
- (h) financial statements, including any filings with governmental agencies or presentations to banks or other financial institutions.

**REQUEST NO. 43:**

All documents concerning CDK's policies and/or practices directed at compliance with the United States antitrust laws.

**REQUEST NO. 44:**

All documents concerning any insurance policies, indemnification agreements or hold harmless agreements that may provide coverage for any of the claims or causes of action asserted in this action, or that may provide reimbursement for payments made or costs incurred in defense of this action.

**REQUEST NO. 45:**

All documents concerning CDK's policies and/or practices regarding the retention, destruction, disposal, and/or preservation of documents.

**REQUEST NO. 46:**

All documents concerning the potential for entities to enter into the market for the supply of DMS, including the potential for such entry and the barriers or obstacles for such entry.

**REQUEST NO. 47:**

All documents concerning the potential for entities to enter into the market for the supply of DIS, including the potential for such entry and the barriers or obstacles for such entry.

**REQUEST NO. 48:**

All documents concerning CDK sales data and information, including but not limited to invoices and all underlying data used to generate invoices for Vendors that used (1) DMI, (2) Integralink, and/or (3) the 3PA program for data integration services, from 2011 to the present, as well as all underlying data used to generate invoices for dealers that used a CDK DMS, from January 1, 2011 to the present. This request includes but is not limited transactional data which shows the payor, date, price, discount, net payable, the category of data polled, as well as records that show the amounts paid to CDK in response to invoices.



Dated: May 25, 2018

Respectfully submitted,

/s/ Peggy J. Wedgworth

Peggy J. Wedgworth

Elizabeth McKenna

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*Dealership Interim Lead Class Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2018, I caused a true and correct copy of the foregoing Dealership Class Plaintiffs' First Set of Requests for the Production of Documents for Defendant CDK Global, LLC to be served by email upon the individuals at the following email address:

CDK-MDL-Team@mayerbrown.com

/s/ Elizabeth McKenna  
Elizabeth McKenna